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**DECLARATION AND ESTABLISHMENT
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT
OF EASEMENTS**

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This DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (this "Declaration") is made as of the 6th day of September, 2016 by LEGACY PLAZA AT 54TH, LLC, a Utah limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain real property located in the City of Taylorsville, Salt Lake County, Utah, more particularly described on Exhibit "A" attached hereto, upon which Declarant may elect to develop an integrated commercial project (the "Project").

B. Declarant contemplates developing the Project for commercial use as part of an integrated project for the mutual benefit of all real property in the Project. In connection therewith, Declarant does hereby fix and establish the Restrictions (as hereinafter defined), upon and subject to which all of the Project, or any part thereof, shall be improved, held, leased, sold and/or conveyed. It is the intent of this Declaration that each and all of the easements, covenants, conditions and restrictions set forth in this Declaration are for the mutual benefit of the Parcels (as hereinafter defined) and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law.

ARTICLE 1

DEFINITIONS

1.1 "Assessment Lien" shall mean that lien created by reason of the delinquency described in and upon recordation of the Notice of Assessment Lien (as hereinafter defined).

1.2 "Building" shall mean any enclosed structure designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any appurtenant supports, service areas and other outward extensions.

1.3 **“Building Area”** shall mean the limited areas of the Project within which Buildings may be constructed, placed or located, to the extent Declarant elects to develop the Project. All Building Areas are designated on the site plan for the Project attached hereto as **Exhibit A-1**.

1.4 **“Common Area”** shall mean all the areas within the exterior boundaries of the Project (to the extent developed) which are made available for the general use, convenience and benefit of all Permittees (as hereinafter defined) and any areas owned by governmental entities located adjacent to the exterior boundaries of the Project (such as sidewalks or landscape areas) that are from time to time designated by Declarant as Common Areas and are maintained by Declarant for the benefit of the Project. Without limitation, Common Areas shall include without limitation the following areas within the exterior boundaries of the Parcels: (i) all parking areas within the Project and parking decks, if any, which are intended to be shared by more than one Parcel; (ii) curb cuts, drive aisles, roadways and driveways; (iii) sidewalks and walkways; (iv) landscaped and planted areas; (v) common utility lines and facilities; and (vi) storm water detention facilities.

1.5 **“Common Area Maintenance Expenses”** shall mean and include all costs and expenses of every nature and kind as may be actually paid or incurred by Declarant (including appropriate reasonable reserves as approved by Declarant) in operating, managing, equipping, lighting, repairing, decorating, replacing, repairing and maintaining the Common Area (including all easement areas granted to third parties or received from third parties if required by the terms of the grant of easement granting the same), and in providing such security and other protection for the Project as Declarant deems necessary. The Common Area Maintenance Expenses shall include, but shall not be limited to, general maintenance and repairs, resurfacing, repaving, striping and cleaning the Common Area; snow removal; maintenance and repair of landscaping and irrigation systems, including, without limitation weeding, pruning, fertilizing and replacing shrubs and other landscaping as necessary; maintenance, replacement and repair of Project signs, directional signs, lighting systems and vertical transportation systems (if any); maintenance and repair of fire protection systems located in the Common Area; storm drainage and sanitary sewer systems, trash disposal or other utility systems; the cost of water service, electricity and other utility costs incurred in connection with the Common Area; exterior holiday decorations; the actual wages and related payroll costs incurred by Declarant for on-site personnel (whether employees of Declarant or third party contractors) employed in the management and operation of the Project (provided, however, that if such personnel are working on projects being developed or operated by Declarant other than the Project, the wages, salaries, fees, and related payroll expenses of such personnel shall be appropriately allocated among all of such projects and only that portion of such expenses reasonably allocable to the Project shall be included in the calculation of Common Area Maintenance Expenses); premiums for commercial general liability insurance and property damage insurance, if any, maintained by Declarant in connection with the Common Area; fees for required licenses and permits; such management fee as Declarant determines appropriate provided that such fees are not materially greater than the fees charged by reputable independent property management companies operating within the greater Salt Lake City metropolitan area; supplies used in the maintenance and/or operation of the Common Area; reasonable depreciation on maintenance and operating machinery and equipment (if owned by Declarant) and rental paid for such machinery and equipment (if rented), provided that no Owner has previously been assessed for the costs and expenses of acquiring such machinery and

equipment and only to the extent such machinery and equipment is actually used for the maintenance and/or operation of the Common Area, such depreciation and rentals to be allocated based upon the actual use of such equipment and machinery in the Project; and the costs and expenses incurred by Declarant in enforcing this Declaration and in preparing, recording and foreclosing assessment liens as to the extent not recovered by an Owner as provided in Article 7 below.

1.6 “Default Rate” shall mean that annual rate of interest equal to the interest rate per annum published by the Wall Street Journal as the prime rate (or in the event the Wall Street Journal no longer publishes a prime rate, then the prime rate or reference rate announced by the then largest chartered bank in Utah in terms of deposits) from time to time plus five percentage (5%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.7 “First Year” shall mean the first full calendar year following the Partial Year.

1.8 “Floor Area” shall mean the actual number of square feet of space contained on each floor within each separately demised space within a Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculations (except to the extent the following areas are taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception): space attributable to any multi-deck, platform or structural levels used for the storage of merchandise which is located vertically above ground floor; and any space used for Building utilities or mechanical equipment. Within thirty (30) days of a request, a Parcel Owner (as hereinafter defined) shall certify to another requesting Parcel Owner the amount of Floor Area applicable to each Building on its Parcel (as hereinafter defined). If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request, such Parcel Owner shall furnish a copy of the survey to the other Parcel Owners for informational purposes only.

1.9 “Governmental Restrictions” shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.10 “Hazardous Materials” shall include, without limitation, any (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Project or to persons on or about the Project, or (ii) cause the Project or any portion thereof to be in violation of any applicable Governmental Restrictions; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels or polychlorinated biphenyls, or radon gas; (c) chemical, material or substance defined as or included in the definition of “hazardous materials,”

“extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Governmental Restrictions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC § 9601, et seq.; the Federal Water Pollution Control Act, as amended, 33 USC § 1251, et seq; and (d) other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

1.11 “Manager” shall mean the person or entity to whom Declarant may delegate any duties, powers or functions of the Declarant as Declarant, in its sole discretion, determines necessary or appropriate, which shall initially be Declarant. In the event Declarant ceases to be Manager, the Declarant (subject to the provisions of Section 10.19 below) shall appoint a new Manager within fifteen (15) business days of the date Declarant ceases to be Manager. Notwithstanding anything to contrary contained herein, the non-operating member of Declarant shall not be entitled to assume any management or operation responsibilities under this Declaration that are contrary to the terms and conditions in the operating agreement governing Declarant.

1.12 “Mortgage” shall mean an indenture of mortgage or deed of trust on a Parcel, including a fee or leasehold indenture of mortgage or deed of trust, or a “sale and leaseback” (meaning a transaction whereby an Owner conveys its fee or a leasehold estate in such Parcel and such conveyance is followed immediately by a leaseback or sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party wholly controlled by such Owner).

1.13 “Mortgagee” shall mean any mortgagee under a Mortgage, or any trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Agreement.

1.14 “Notice of Assessment Lien” shall mean a notice recorded in the Official Records of Salt Lake County, Utah (the “Official Records”), and such other place as may be required by law, by any person to whom any assessment or other sum of money payable by any Owner (as hereinafter defined) pursuant to any provision of this Declaration stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.15 “Owner” shall mean each person who, at any given time, holds fee title to any Parcel or any portion thereof, or a ground lessee of any Parcel or any portion thereof (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the Official Records), subject to Section 1.18.

1.16 “Parcel” or “Parcels” shall mean one or more legal parcels that comprise the Project and such further ground lease or subdivision of any such Parcel as approved by Declarant.

1.17 “Parcel Area” shall mean the total gross square footage of the land of such Parcel. Such area shall be conclusively presumed to be the areas shown on any parcel map or survey that may be recorded in the Official Records, as such parcel map or survey may be amended by any lot line adjustment, or such later parcel map or subdivision map showing the Parcel.

1.18 “Parcel Owner” shall mean the Owner, and its successors and assigns, in and to any Parcel. No ground lessee of a Parcel shall be considered a Parcel Owner unless the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the Official Records. No ground lessee shall be considered a Parcel Owner unless, subject to the foregoing, such ground lessee leases an entire Parcel.

1.19 “Partial Year” shall mean the initial fractional calendar year following the date Declarant determines that such portion of the Common Area of the Project has been completed for purposes of commencing payment of Common Area Maintenance Expenses.

1.20 “Parties” shall mean the Parcel Owners.

1.21 “Permittees” shall mean the Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; and respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.22 “Person” shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.23 “Prohibited Uses” shall mean any unlawful use and any use or operation which is clearly objectionable to the development or operation of the Project as a high quality retail, commercial and/or office project, as so operated, as determined by Declarant in Declarant’s commercially reasonable discretion. Except for high quality retail, commercial and/or office uses, or such other uses which are consented to in writing by Declarant, which consent may be withheld by Declarant in Declarant’s commercially reasonable discretion, the following shall be Prohibited Uses:

(i) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Project; provided, that the foregoing shall not apply to: (a) the preparation of food, (b) a Permittee serving food at outdoor tables, or (c) a paging system within a building;

(ii) Any operation primarily used for any refining, smelting, agricultural, or mining operation;

(iii) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(iv) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located at the rear or side of any building or inside any building); provided, however, this prohibition shall not preclude the recycling of bottles or other containers as an incidental part of the operations of any Permittee;

(v) Any central laundry dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to on-site laundry or dry-cleaning service oriented to pickup and delivery by the ultimate consumer. Allowable operations which may include on-site dry-cleaning provided the operator complies with the following requirements:

(a) There shall be no dry-cleaning performed on-site except dry-cleaning for pickup on-site by the ultimate consumer.

(b) The operator shall at all times comply with all federal, state, and local laws related to hazardous materials;

(c) The operator shall at all times provide Declarant with an updated list of all dry-cleaning equipment, together with copies of manufacturers' warranties; and

(d) Declarant shall at all times have the right to require the operator to upgrade its equipment or the installation thereof at Declarant's discretion.

(vi) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or repair operation. This prohibition shall not preclude an oil change business (such as Q-Lube) or a service station that includes automobile repair, provided that any servicing of vehicles shall be primarily performed indoors and there shall be no outdoor storage of any kind, including without limitation, parts, equipment, supplies, or vehicles;

(vii) Any funeral parlor, cemetery or crematorium;

(viii) Any establishment selling or exhibiting materials or paraphernalia for use with illicit drugs; a so-called "head shop";

(x) Any establishment selling or exhibiting pornographic materials (this shall not prohibit the showing of "R" rated movies); or

(xi) Other than the parcel owned by Texas Roadhouse Holdings LLC or any other entity or person affiliated with the same (collectively, "Texas Roadhouse") (the "TXRH Parcel"), no property owned or controlled by Declarant within the Project as of the effective date of this Agreement shall be leased, sold, occupied, used or operated by any party as a full service restaurant occupying more than three thousand (3,000) square feet whose Principal Business (as hereinafter defined) is the sale of steaks and ribs (the "TXRH Exclusive Use"); provided, however, the foregoing Exclusive Use restriction shall not apply to any leases or occupancy agreements of any property within the Project owned by Declarant or any extensions or renewals of such existing leases or occupancy agreements (collectively, the "Existing Leases") unless the tenant or occupant under such Existing Leases proposes to change the permitted use of its premises from that which is currently permitted under its lease or proposes to enter into an assignment or sublease transaction, and the proposed use of the premises following such

assignment or sublease is different from the present use of such premises which is currently permitted under its lease, then to the extent Declarant's consent or approval is required for any such change in use, assignment or sublease, Declarant shall not consent to any such change in use or such assignment or sublease if such change would violate the TXRH Exclusive Use (it being understood however that Declarant may consent to such change in use if Declarant has been advised in a written opinion issued by an attorney licensed in the state of Utah that under the terms of the lease of the entity requesting such consent to a change in use that Declarant is obligated to give such consent under Utah law). For the purposes of this subsection (xi), the term "Principal Business" shall mean any party who derives more than thirty percent (30%) of its gross sales from the sale of steaks and/or ribs.

1.24 "Restrictions" shall mean those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Declaration.

1.25 "Taxes" shall mean all taxes and assessments on the property within the Project.

ARTICLE 2

USE IN GENERAL

2.1 Lawful Use. If and when developed (meaning, for purposes of this Declaration, an integrated commercial project for the mutual benefit of all real property in the Project), the Project may be used for any lawful commercial purpose not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use. Declarant shall have the authority to adopt such reasonable rules and regulations pertaining to the Common Area as Declarant determines appropriate from time to time in Declarant's business judgment subject to the following limitations: (i) all such rules shall be non-discriminatory and consistently applied so that similarly situated Owners and Permittees are generally treated in a similar manner; and (ii) no rule shall interfere with the activities carried on within the confines of the structures on any Parcel, except that the Declarant may restrict or prohibit activities that create the possibility of unreasonable monetary costs for other Owners or Permittees, that endanger the health or safety of Permittees of other Parcels, that generate excessive noise or traffic, that create unsightly conditions visible outside the confines of such structures, or that create a source of unreasonable annoyance to Permittees of other Parcels.

2.2 Zoning. This Declaration shall be subject to applicable zoning.

ARTICLE 3

CONSTRUCTION

3.1 Buildings Only in Building Area. If and when the Project is developed, no Building or structure of any kind shall be erected, placed or maintained on any portion of the Project except upon those portions designated by Declarant.

3.2 Alteration Approval. In order to maintain the architectural and functional harmony of the Project (to the extent developed), no Building or structure within the Project shall be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose of such item, unless such alteration is first approved in writing by Declarant, such approval not to be unreasonably withheld, conditioned or delayed. Such approval shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by Declarant of detailed plans and specifications therefor. Failure to respond in writing to a written request for such approval within sixty (60) days of its receipt shall be deemed Declarant's approval of such proposed construction, reconstruction or alteration. All alterations or improvements shall be constructed in strict accordance with the plans and specifications approved by Declarant, such approval not to be unreasonably withheld, conditioned or delayed. No material deviation shall be made from such plans and specifications without Declarant's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Compliance with the design review process set forth in this Declaration is not a substitute for compliance with County building, zoning, and subdivision regulations, and each Owner shall be responsible for obtaining all approvals, licenses, and permits required by applicable law prior to commencing construction. Neither Declarant, nor any manager, employee, agent, or consultant of Declarant shall be: (i) liable to any Person, including any Owner, Permittee, or contractor for any loss, liability, claim, or expense which may arise by reason of the approval or disapproval of any improvement; or (ii) responsible in any way for any defects in any plans or specifications submitted, revised, or approved pursuant to this Article or for any structural or other defect in any work done. Approval by the Declarant of any application shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar application thereafter submitted. The Declarant's approval of any proposed alteration or improvement shall automatically be revoked one year after issuance unless construction of the alteration or improvement has been commenced.

3.3 Construction Procedures. To the extent the Project is developed:

a. All construction activities within the Project shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state and federal governments, or any department or agency thereof, having jurisdiction over the Project.

b. All construction activities within the Parcels shall be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or any part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or any part thereof or the business conducted by any other Owner or Permittees.

c. When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner shall

establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas (i) shall not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits), and (ii) shall be subject to the approval of Declarant, such approval not to be unreasonably withheld, conditioned or delayed. If substantial work is to be performed, such Owner, at the request of Declarant or any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work.

d. Prior to constructing, reconstructing, remodeling or enlarging a building or changing the Common Areas on a Parcel, the Permittee of such Parcel shall give Declarant at least thirty (30) days prior written notice of the proposed activities and the proposed location of any staging and storage area and proposed access points. Upon completion of such work, the constructing Person shall restore the affected Common Areas to a condition at least equal to that existing prior to commencement of such work. The construction of any building, including painting and all exterior finish, shall be pursued diligently and shall be completed within nine (9) months after the beginning of construction so as to present a finished appearance when viewed from any angle. All landscaping on a Parcel shall be completed within one (1) month after the date of completion of the structures thereon.

e. Each Owner shall diligently complete all construction activities within its Parcel as diligently as possible, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

f. Each Owner shall indemnify, defend and hold harmless each other Owner from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys' fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

ARTICLE 4

PROJECT EASEMENTS

4.1 Grant of Easements. Declarant hereby establishes and grants to, and each other person who becomes an Owner shall, immediately upon becoming an Owner and without further act, be deemed to have established and granted to all other Owners and all Permittees of the Project, and their guests, employees, invitees, permittees, licensees, patrons and customers,

irrevocable, non-exclusive easements over, across, upon and beneath the Common Area held by such Owner for the purposes set forth in Section 4.2. Nothing in this Section or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses. To the extent the Project is developed, the Common Area shall be used for the following purposes:

a. The parking of passenger vehicles and the pedestrian and vehicular traffic of all Permittees.

b. The ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Area and the public streets adjacent to the Common Area.

c. The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Declarant. All Owners shall cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, such Owner does not unreasonably interfere with the use of the Common Area by Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of Declarant.

d. The maintenance and repair of any of the items referred to in Section 4.2(c) above.

e. The ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the Project, the delivery of goods, wares and merchandise, and the rendering of services to all persons or other entities who may lease portions of the Building Areas. Each tenant or other occupant of the Project shall use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Declarant. In the event it is necessary that deliveries be made other than in the areas designated by Declarant, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.

f. Subject to the prior written approval of Declarant, which will not be unreasonably withheld, the temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction

equipment, upon the condition, however, that all construction, remodeling or repair of buildings and building appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

g. Reciprocal appurtenant easements for any encroachment, and for maintenance and use of any encroachment permitted under this Section which now or hereafter exists between any Parcel and any adjacent Common Areas or between any adjacent Parcels, to the extent that any such encroachment: (i) is not the result of any willful, knowing, or negligent conduct on the part of an Owner or Permittee, as the case may be; and (ii) extends for a distance of not more than three feet, measured from any point on the common boundary along a line perpendicular to such boundary.

h. Easements over the Common Areas for natural drainage of storm water runoff from other portions of the Project. In addition, an easement is hereby reserved for Declarant to enter on, across, over, in, and under any portion of the Project (except for any Building Area) for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Project for the purpose of improving drainage from and across the Project; provided that the holders of such easement shall use all reasonable efforts to conduct any such work in a manner which minimizes any disturbance to the uses of the Project by Declarant, the Owners, and Permittees; shall undertake any such work expeditiously; and shall restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following the completion such work. No Person shall alter the natural drainage on or over any Parcel so as to increase materially the drainage of storm water onto adjacent portions of the Project without the consent of the Owner of the affected Parcel.

i. Declarant or Declarant's agents and designees shall have the right, but not the obligation, to enter upon any Parcel, including any Building thereon, for emergency, security, or safety reasons (including the correction of any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by Declarant), to perform maintenance pursuant to this Declaration in the event an Owner fails or refuses to cure the condition within the period required under this Declaration, and to determine whether such Parcel and improvements and the activities thereon comply with this Declaration. Except in an emergency situation, entry to any structure shall occur only during reasonable hours and after reasonable advance notice to the Owner thereof.

4.3 Common Area Alteration. Subject to the limitations and restrictions set forth in Section 4.4 below, to the extent the Project is developed, no Owner or other person shall alter any parking areas or other improvements located upon the Common Area, including without limitation the access points to the adjacent public rights-of-way existing as of the effective of this Declaration, without the prior written consent of Declarant, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing: (i) an Owner (or Declarant) shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2(c), so long as such excavation or construction activities shall be prosecuted diligently to completion; provided, that the consent of the Parcel Owner on whose

Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld, conditioned or delayed, and the person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used; and (ii) subject to the restrictions contained in this Section 4.3 and in Section 4.4 below, Declarant may make alterations in the Common Area as it shall deem appropriate or necessary. Any work performed in the Project pursuant to this subparagraph shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project.

4.4 TXRH Protected Areas. Notwithstanding anything to the contrary contained in this Declaration, without the prior written consent of the then current Owner of the TXRH Parcel (such consent not to be unreasonably withheld, conditioned or delayed), in no event shall Declarant and/or any other Owner (as and if applicable) (i) alter or change the access points (including the location of curb cuts) identified on Exhibit "A-1" as the "TXRH Protected Access" and/or (ii) substantially reduce, alter and/or reconfigure the parking spaces within that certain area identified on Exhibit "A-1" as the "TXRH Protected Area".

ARTICLE 5

OPERATION AND MAINTENANCE OF BUILDING AREA AND COMMON AREA

5.1 Taxes and Assessments. All Owners shall pay, prior to delinquency, all Taxes on the property within the Project owned or leased by them. If any such Owner shall fail to pay such Taxes prior to delinquency, any other Owner or the tenant of any other Owner may pay such Taxes and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, the curing Owner or tenant shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by such Owner or tenant as provided in Article 7 below. An Owner (or the tenant or occupant of an Owner if such tenant or occupant has the right under its lease or occupancy agreement to contest Taxes) shall have the right, in good faith, to contest the amount of Taxes owing with respect to its property; provided, that such Owner (or tenant or occupant) shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within the Project, including, immediately following the request of Declarant, recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

5.2 Undivided Assessments. Any assessment for public improvements levied against the entire Project, rather than against individual Parcels, shall be paid by all Owners in accordance with the percentages determined pursuant to Section 5.9 below.

5.3 Building Maintenance. Each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenantable condition, all Buildings located upon its Parcel or

Parcels. Each Owner of a Parcel shall keep the Buildings located on its Parcel in a high quality condition and state of repair, in compliance with all governmental laws, rules, regulations, orders and ordinances exercising jurisdiction therefor, and in compliance with the provisions of this Declaration. Each Permittee shall store all trash and garbage in adequate containers, locate such containers in the portions of the Project as is approved by Declarant, and arrange for regular removal of such trash or garbage. Each Owner shall maintain in good condition and repair all utility facilities, lines and systems located on such Parcel. To the extent any such facilities, lines or systems serve more than one Parcel, such maintenance obligations shall be equitably shared between each such Owner so long as the cause for the need of any maintenance was not due to a negligent act or omission by one Owner or its Permittee or their respective agents or employees (in which event such Owner shall be solely responsible for all costs of such maintenance). Any Person performing or causing to be performed maintenance or repair work agrees to promptly pay all costs and expenses associated with such maintenance or repairs to be diligently and promptly completed and to promptly clean the area and restore any affected portion of the Common Areas to a condition equal to or better than the condition which existed prior to the commencement of such work.

5.4 Common Area Maintenance. Except as otherwise provided herein, Declarant shall operate and maintain, or cause to be operated and maintained, the Common Area, including the repairs or services with respect to the Common Areas, all of the costs and expenses for which shall be included in Common Area Maintenance Expenses.

5.5 Common Area Liability Insurance. As part of the operation of the Common Area (to the extent developed), Declarant shall obtain and maintain commercial general liability insurance insuring all Owners and such other persons who now or hereafter own portions of the Project, as their respective interests may appear, against claims for personal injury, death or property damage occurring in, upon or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of Utah. The limits of liability of all such insurance shall be at least Three Million Dollars (\$3,000,000.00) combined single limit, and may be increased by Declarant in its discretion from time to time. Declarant shall cause to be issued certificates of insurance to each of the Owners and have such certificates provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to each of the Owners and shall name such Owners as an additional insured under such insurance policies.

5.6 Proportionate Share of Common Area Maintenance Expenses. To the extent the Project is developed, Declarant shall expend only the monies reasonably necessary for the operation of the Common Area and for the maintenance thereof in order to keep the Common Area in good repair and clean condition. Each Owner shall pay to Declarant its proportionate share (determined pursuant to Section 5.9 below) of Common Area Maintenance Expenses. For the Partial Year and during the First Year, until the month following the delivery of the Statement referred to in Section 5.7 below, each Owner shall pay to Declarant, on or before the first day of each calendar month, its proportionate share of an estimate of the Common Area Maintenance Expenses for the Partial Year, which estimate shall be reasonably established by Declarant.

5.7 Partial Year Expenses. On or before April 15 of the First Year, Declarant shall furnish each Owner with a statement (the "Statement") showing in reasonable detail the

total Common Area Maintenance Expenses for the Partial Year. Commencing with the first day of the calendar month in the First Year immediately following the calendar month in which the Statement is furnished, as provided above, each Owner shall pay to Declarant on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the total Common Area Maintenance Expenses paid by Declarant for the Partial Year by the number of calendar months (including as a fraction any initial fractional calendar month) in such Partial Year. On or before April 15 of each calendar year thereafter, Declarant shall furnish each Owner with the Statement showing in reasonable detail the total actual Common Area Maintenance Expenses for the preceding calendar year. Commencing with the first day of the calendar month immediately following the calendar month in which the Statement is furnished, each Owner shall pay to Declarant on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the actual Common Area Maintenance Expenses paid by Declarant for the preceding calendar year by twelve (12). The failure of Declarant to furnish a Statement setting forth Common Area Maintenance Expenses within the time periods set forth above shall not constitute a default hereunder by Declarant or a waiver of Declarant's right to receive payment of an Owner's proportionate share thereof, except that Declarant shall be deemed to have waived its right to receive payment as to any Common Area Maintenance Expenses that are not set forth in a Statement delivered to the Owners within three (3) years after the date upon which they were incurred.

5.8 Full Year Expenses. Following the end of the Partial Year and each subsequent full calendar year of the term hereof and each Owner's receipt of a Statement of the total Common Area Maintenance Expenses for such year, the amounts due from each Owner as its proportionate share of the Common Area Maintenance Expenses for the Partial Year or full calendar year shall be adjusted between Declarant and each Owner. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year exceeds the amount prepaid by such Owner, such Owner shall pay to Declarant such excess within thirty (30) days following the Owner's receipt of Declarant's statement. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year is less than the amount prepaid by such Owner, the amount of excess prepayment by such Owner shall be credited against such Owner's future prepayment obligations regarding Common Area Maintenance Expenses, cumulative from month to month until such excess is exhausted.

5.9 Determination of Proportionate Share. Each Owner of a Parcel shall pay, as its proportionate share of Common Area Maintenance Expenses, that amount determined by multiplying the amount of such Common Area Maintenance Expenses by a percentage based on either of the following ratios (with Declarant determining which ratio is appropriate from time to time to use in Declarant's business judgment): (i) the ratio that the Parcel Area of Owner's Parcel bears to the total Parcel Area of all Parcels within the Project, or (ii) the ratio of the gross leasable area of the buildings on an Owner's Parcel bears to the total gross leasable area of all buildings on a Parcel within the Project; provided, however, that to the extent any Common Area Maintenance Expenses relate to the operation or maintenance of Common Areas that serve fewer than all the Parcels (such as shared parking facilities that serve more than one but fewer than all the Parcels), such Common Area Maintenance Expenses shall be equitably shared between only the Parcels served by such Common Areas.

5.10 Owners' Duty to Maintain Common Area. If, following the development of the Project by Declarant, any period of time exists when no person is performing the duties of Declarant, each Owner shall have the obligation to maintain its Parcel(s) in a manner consistent with the provisions of this Declaration. If any such Owner shall fail to so maintain its own Parcel(s), then subject to Article 9, any other Owner or Permittee shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of thirty (30) days in which to cure such default, or, if the nature of the default is such that it cannot be reasonably cured within such 30 day period, the Owner shall commence to cure said default within such 30 day period and diligently pursue the curing of such default to completion. If the defaulting Owner does not cure such default within said 30 day period, or, if applicable, commence to cure such default within said 30 day period and diligently pursue the curing of such default to completion, then subject to Article 9, the Owner(s) and/or Permittee(s) giving the notice of default may do so and the curing Owner or Permittee may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, then the curing Owner or Permittee shall have a lien on the Parcel of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

5.11 Agents. In performing the duties of Declarant hereunder, Declarant may utilize such agents and independent contractors (including the Manager) as Declarant may designate, provided that the rates and/or fees charged by such agents and independent contractors are commercially reasonable and are not materially greater than the rates and fees charged by other third party agents and independent contractors offering the same or similar services within the greater Salt Lake City metropolitan area.

5.12 Signs. No exterior identification signs shall be allowed within the Project except as set forth hereinafter.

a. No freestanding sign shall be permitted within the Project unless constructed in areas approved by Declarant. The designation of a freestanding sign location on a Parcel shall in no way obligate Owner of such Parcel to construct such freestanding sign. Notwithstanding anything above to the contrary, an Owner shall be permitted to place within the Common Areas located on its Parcel directional signs or informational signs such as "Handicapped Parking", the temporary display of leasing information and the temporary erection of one sign identifying each contractor working on a construction job. Without the prior written consent of Declarant, no exterior identification sign attached to a building or interior sign displayed in a window of a building for viewing from the exterior of such building shall be of the type set forth below:

(i) placed on canopy roofs extending above the building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted;

(ii) placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight feet above the sidewalk; or

(iii) painted on the surface of any building.

b. Without the prior written consent of Declarant, all signs shall comply with the following requirements:

(i) No animated, flashing, moving or audible signs.

(ii) All signs and their installation shall comply with all local building and electrical codes.

(iii) No exposed conduit. All conductors, transformers and other equipment shall be concealed.

(iv) All signs shall be professionally made. No painted lettering, paper or cardboard signs, temporary signs (exclusive of contractor or real estate leasing or sale signs), stickers or decals without Declarant's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

(v) No advertising placards, banners, pennants, names, insignia, trademarks or other descriptive material shall be affixed or maintained upon the glass panes and supports of the show windows and doors, or upon the exterior wall of the building or storefront unless specifically approved in writing by Declarant.

(vi) The total length of sign shall in no event be more than 70% of the wall length. Each Permittee's total sign area shall equal 1.5 sq. ft. per lineal foot of the Permittee's primary building wall.

(vii) No signs perpendicular to the wall face of the building or storefront. All signs shall be located in the sign band area. No signs shall be placed to extend above or below the sign band area.

ARTICLE 6

INSURANCE

6.1 Liability Insurance. Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized and registered to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-/X, on all property within the Project owned or leased by such Owner and all Buildings and other improvements owned or leased by such Owner, a policy or policies of bodily injury and property damage liability insurance with combined single limits of at least Three Million Dollars (\$3,000,000.00), in which all other Owners, Declarant, any Mortgagee of Declarant and any property manager of Declarant shall be named as additional insureds, insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other improvements located on the property within the Project owned or leased by such Owner. Each Owner shall also maintain all-risk insurance coverage on all Buildings and

improvements (including Common Areas) located upon that portion of the Project leased or owned by such Owner including loss or damage by fire and such other risks as are from time to time included in the all-risk coverage insurance policies customarily issued in Utah in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. Such all-risk insurance policies shall be maintained with good and solvent insurance companies authorized to do business in and registered with the State of Utah and having a rating by Best's Insurance Reports of not less than A-/X.

6.2 Certificates. Each Owner shall, upon request thereof from Declarant or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. To the extent that the same shall not invalidate any insurance coverage obtained by an Owner, each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to, the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation), each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Article shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to Declarant.

If any Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then subject to Article 9, any other Owner or Permittee shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said 10 day period, then subject to Article 9, the Owner(s) and/or Permittee(s) giving the notice of default may do so and the curing Owner or Permittee may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within ten (10) days, then the curing Owner or Permittee shall have a lien on the Parcel of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.3 Indemnification. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("Indemnitee") from and against all claims, including any actions or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees actually incurred and costs of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned or leased by Indemnitor, except for claims caused by the negligence or willful act or omission of Indemnitee or its agents, servants, partners or employees.

ARTICLE 7

ASSESSMENT LIEN

7.1 Assessment Lien Procedure. In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration to any person is not paid when due and after expiration of any applicable grace period set forth herein, then the person to whom such sums are owing shall have the right to record, in the Official Records, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien and the person recording such Notice of Assessment Lien shall provide written notice of such recordation to the defaulting Owner. In the event the amount secured by such Assessment Lien is not paid in full within thirty (30) days after the defaulting Owner's receipt of notice that a Notice of Assessment Lien has been recorded, the person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner, by taking either or both of the following actions, concurrently or separately (by exercising either of the remedies set forth below, such person shall not prejudice or waive its right to exercise the other remedy, or such additional remedies as may be available under its lease or under applicable law):

- a. Bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;
- b. Foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing Utah law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or
- c. Pursuing any other remedy at law or in equity.

7.2 Personal Obligation. Each assessment or amount due pursuant to any provision of this Declaration by an Owner, together with interest at the Default Rate, costs and attorneys' fees, shall be the personal obligation of such defaulting Owner, but such personal obligation of such Owner shall not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the property of such Owner within the Project, regardless of a subsequent conveyance of that property. No Owner shall escape liability for payment of any amount due hereunder which fell due while during any period of nonuse of the Common Area by such Owner or subsequent to the abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded pursuant to Section 7.1 above is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

7.3 Priority. The Assessment Lien provided for above shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be

imposed upon any portion of the Project; provided, however, that such Assessment Lien shall be subject and subordinate to:

a. Liens for taxes and other public charges which by applicable law are expressly made superior;

b. Any Mortgages recorded in the Official Records (and such other place as may be required or permitted by law) prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Lien shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and

c. The rights of any and all tenants occupying any portion of the Project under written leases.

7.4 Cure. Upon the curing of any default for which a Notice of Assessment Lien was recorded, the person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such person, to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees, as such person shall have incurred.

7.5 Late Charge/Default Interest. If any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration to any person is not paid when due and after expiration of any applicable grace period set forth herein, in addition to any other rights and remedies of Declarant for such Owner's default, such Owner shall pay to Declarant: (A) a late charge equal to ten percent (10%) of the overdue amount or five hundred dollars (\$500.00), whichever is greater, to cover additional administrative costs; and (B) interest on the delinquent amounts at a default rate of interest equal to the lesser of the maximum rate permitted by law, if any, or the Prime Rate plus eight percent (8%) per annum, from the date due to the date paid. For purposes hereof, the "Prime Rate" shall mean the rate of interest per annum publicly announced by Bank America in San Francisco, California (or such other national lending institution as selected by Declarant) as its prime lending rate or reference rate as in effect from time to time (the Prime Rate is not necessarily the best or lowest rate of interest offered by the bank).

ARTICLE 8

CASUALTY

8.1 Damage to Buildings. In the event any Building or appurtenant improvement on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly (i) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Declaration, or (ii) level such Building or improvement, remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained, and covered with planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover

approved by Declarant (in Declarant's sole discretion), until subsequently improved or constructed upon, provided that no such protective covering shall increase the drainage burden on any other Parcel.

8.2 Damage to Common Areas. Upon any damage or destruction to the Common Area on a Parcel during the term of this Declaration (i) from any cause insurable under an all-risk insurance policy of the type then customarily issued in the State of Utah for similar property or (ii) if not so insurable, the cost of repair of which (including applicable governmental fees and exactions) does not exceed twenty percent (20%) of the then full replacement cost of all of the Common Area on such Parcel, the Owner upon whose Parcel such damage or destruction occurred shall, at its sole cost and expense, promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area. If the cost of repair under clause (ii) above exceeds twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel and the Owner of the affected Parcel elects (which such election shall be made, if at all, within thirty (30) days following such damage or destruction) not to restore, repair or rebuild the damaged or destroyed Common Area, and if the damaged or destroyed Common Area includes or affects any entrances to the Project, access drives or drive aisles within the Project, or common utilities or signs, then any other Owner shall have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Area, in which event the electing Owner or Owners shall effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Declaration, and the Owner of the Parcel upon which such damage and destruction occurred shall bear the first of the costs incurred to restore, repair and rebuild the affected Common Area to the extent not in excess of twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel, and the electing Owner or Owners shall bear all such costs exceeding twenty percent (20%) of the then full replacement cost of such Common Area. If an affected Owner is not obligated to repair damaged or destroyed Common Area pursuant to clause (ii) above, and no other Owner elects to effect such repair within thirty (30) days after the date the affected Owner determines not to proceed with such repairs, then the affected Owner shall promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained, and covered with planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover approved by Declarant (in Declarant's sole discretion), until subsequently improved or constructed upon, provided that no such protective covering shall increase the drainage burden on any other Parcel. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Area, the plans or specifications for such work shall be subject to the prior written approval of Declarant as otherwise required pursuant to this Declaration. Each affected Owner shall use all due diligence to complete such restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit.

ARTICLE 9
ENFORCEMENT OF COVENANTS.

9.1 Remedies. In the event of any breach of or other non-compliance with any provision of the Declaration (other than the provisions of Article 7, as to which the rights and remedies set forth therein shall apply), Declarant may: (i) bring an action to recover monetary damages; (ii) institute a proceeding in equity to obtain injunctive or other equitable relief; (iii) impose reasonable fines against such Owner in such amount as Declarant deems appropriate in response to the violation; (iv) enter the Parcel in question, remove, abate, modify, or replace the item which is the cause of such violation in a manner that results in conformance with the Declaration following such Parcel Owner's failure to do the same within the applicable cure periods hereunder (except in the event of an emergency), and assess the cost thereof against the Owner of such Parcel; and/or (v) exercise any other right or remedy available to it at law, in equity, or under the Declaration.

9.2 Rights of Owners. Any action to enforce the Declaration may be instituted by Declarant. If, after written request from an aggrieved Owner or Permittee, Declarant fails to commence an action to enforce the Declaration within a reasonable period, then the aggrieved Owner or Permittee may bring such an action independently, including the right to exercise any of the remedies granted in Section 9.1 above.

9.3 Limitation of Liability. Reasonable and good faith exercise of any rights of entry set forth in the Declaration shall not subject Declarant or its members, managers, agents, employees, or contractors to any liability for trespass, conversion, or other claim for damages. Neither Declarant, nor its members, managers, agents, employees, or contractors shall be liable to any Owner or other Person for failure at any time to enforce any of the Declaration.

9.4 Recovery of Costs and Fees. In the event any suit, action, or other proceeding is instituted to enforce any of the Declaration or in connection with any dispute arising thereunder, the prevailing party shall be entitled to recover its costs and expenses incurred in connection therewith, including such amount as the court may determine to be reasonable as attorneys' fees at trial and on any appeal or review.

9.5 Remedies Not Exclusive. An election to pursue any remedy provided for violation of the Declaration shall not prevent concurrent or subsequent exercise of other rights or remedies permitted thereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under at law or in equity.

ARTICLE 10
GENERAL PROVISIONS

10.1 Successors and Assigns. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Project and shall be a burden thereon, for the benefit of all portions of the Project, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant and the Owners and their

successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale. No Owner shall bring any action for partition or division of the Common Areas. By accepting a deed to or entering into a recorded contract of sale for a Parcel, each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain any partition or other action designed to cause a division of the Common Areas.

10.2 Run With the Land. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon each and all of the parties (and upon all persons claiming under them) for a period of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless Owners owning at least fifty-one percent (51%) of the land area within the Project otherwise elect in a writing recorded in the Official Records.

10.3 Modification. This Declaration may be modified in any respect whatsoever with the consent of Declarant without the necessity of obtaining the consent of any other Owner; provided, however if such a modification:

a. directly and materially affects the access to, visibility of or parking on a Parcel, including without limitation any parking located within the TXRH Protected Area identified on Exhibit A-1 attached hereto and/or the access points (including the location of curb cuts) identified on Exhibit "A-1" as the TXRH Protected Access; or

b. would result in an increase in Common Area Maintenance Expenses for a Parcel Owner;

then the Owner of any such affected Parcel must also consent to such modification. Such modification may only be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the Official Records and at such other place as may be necessary.

10.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

10.5 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

10.6 Survival. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

10.7 No Merger. The ownership of the entire Project by the same party shall not effect the termination of this Declaration.

10.8 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

10.9 Minimization of Damages. In all situations arising out of this Declaration, all Persons shall attempt to avoid and minimize the damages resulting from the conduct of any other Person. It is expressly agreed that no breach of this Declaration shall entitle any Person to cancel, rescind, or otherwise terminate this Declaration, or defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Project. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

10.10 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein. Notwithstanding the foregoing, tenants and other occupants of the Project, and their customers, guests and invitees, shall be permitted to use the Common Area of the Project as set forth herein.

10.11 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of the Project; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel. The Owner of any portion of the Common Areas on a Parcel so condemned shall promptly repair and restore the remaining portion of the Common Areas located on such Owner's Parcel (including reestablishing any common utility facilities) as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner.

10.12 Captions. The captions heading the various Articles and Sections of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

10.13 Consent. Unless otherwise set forth herein, any approval or consent required or requested of Declarant may be withheld in its sole and absolute discretion. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner, other than Declarant, shall not be unreasonably withheld and shall be given or withheld

within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner shall be deemed to have approved of, or consented to, the matter in question.

10.14 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within the Project (and any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing). In the event, at any time, that an interest in the same portion of property within the Project shall be vested in more than one person, such persons shall designate one of them 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 duly executed and acknowledged by each such person, and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Declaration. An original of such designation shall be recorded in the Official Records. A majority of such persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

10.15 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express), or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Declarant: LEGACY PLAZA AT 54TH, LLC
c/o Legacy Real Estate Investments, Inc.
1962 E. Stag Hill Circle
Draper, UT 84020
Attn: David Werts
Email: david@legacyREinvestments.com
Phone: (801) 996-8626

To any other Owner: At such address as such Owner shall designate in writing to Declarant, or at such Owner's address in the Project if such Owner shall fail to designate in writing another address to Declarant.

Declarant shall make all addresses furnished by any Owner pursuant to this Section 10.15 available to any Owner, occupant or tenant of the Project who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to Declarant in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed

to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

10.16 Estoppel Certificates. Each Owner shall deliver to any other Owner, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel (or stating the amount of any such Assessment Lien(s)).

10.17 Subdivision. Declarant shall have the right to subdivide any Parcel. Upon such subdivision, each portion of such subdivided Parcel shall be a separate Parcel. No other Owner shall have the right to subdivide any Parcel.

10.18 Governing Law. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Utah, without regard to any conflicts of laws or choice of law provisions thereof.

10.19 Declarant. So long as Legacy Plaza at 54th, LLC ("Legacy") owns any Parcel within the Project, Legacy shall be the "Declarant" for purposes of this Declaration, unless it otherwise elects. At such time that Legacy no longer owns a Parcel within the Project or otherwise elects to no longer be Declarant hereunder, Owners owning a majority of the land area within the Project shall then elect another Owner to be Declarant hereunder. For all purposes under this Declaration, Legacy shall include its successors and assigns, by merger, consolidation or by purchase of all or substantially all of its assets and any person or entity, his or its successors or assigns, to which Declarant has assigned any or all of its rights and obligations by an express assignment which may be incorporated into a recorded instrument including but not limited to a deed, lease, option agreement, land sale contract or assignment as the case may be, transferring such interest if such assignee agrees in writing with the Declarant.

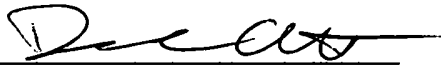
10.20 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Project, any parcel, or any improvement, including, without limitation, physical condition, zoning, compliance with applicable laws, fitness for intended use, operations, maintenance, cost of maintenance, level of assessments or taxes.

10.21 Other Agreements. Nothing contained in this Declaration shall be construed as a limitation on Declarant's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to Declarant or otherwise different than those contained herein; provided, however, in all events, any such agreement shall be subordinate to this Declaration.

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

DECLARANT:

LEGACY PLAZA AT 54TH, LLC,
a Utah limited liability company

By: 

Name: David C. Werts

Title: Operating Manager

STATE OF UTAH

County of Salt Lake)
)ss.

On this day personally appeared before me David Yeatts to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, as the operating manager of LEGACY PLAZA AT 54TH, LLC, a Utah limited liability company, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned on behalf of such limited liability company. Given under my hand and official seal this 6 day of Sept, 2016.

Nina Gardner
Notary Public in and for the State of Utah
Residing at DRAPER UT
My Commission Expires: 4-16-2019

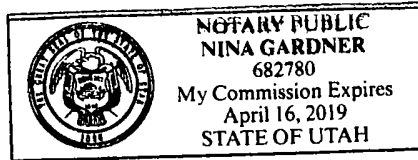


EXHIBIT A

LEGAL DESCRIPTION OF PROJECT

BEGINNING at a point on the North property line of 5400 South Street, which point is 1262.36 feet South 89°53'41" West and 53.00 feet North 0°013'19" West from the South Quarter Corner of Section 10, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°53'41" East 0.06 feet; thence 398.14 feet along the arc of a 11406.16 foot radius curve to the left (bearing North 00°06'19" West to the center of its beginning); thence North 87°53'41" East 173.03 feet; thence 401.84 feet along the arc of a 11512.16 foot radius curve to the right (bearing South 02°06'19" East to the center of its beginning); thence North 89°53'41" East 126.78 feet; thence North 73°38'19" East 114.50 feet to the West property line of Redwood Road; thence North 0°02'55" West 557.04 feet; thence West 1211.30 feet; thence South 0°13'19" East 611.34 feet to the point of BEGINNING.

Less and excepting therefrom:

A parcel of land in fee, being part of an entire tract of property situate in the Southeast quarter Southwest quarter of Section 10, Township 2 South, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, State of Utah. The boundaries of said parcel of land are described as follows:

Beginning at a point on the Northerly right-of-way line of 5400 South Street 980.93 feet South 89°53'41" West along the Section line and 56.47 feet North 00°06'19" West from the South quarter corner of said Section 10, which point is 56.74 feet perpendicularly distant Northerly from the control line of said 5400 South Street opposite approximate Engineer Station 74+29.04, and running thence North 83°00'11" East 150.49 feet to a point 69.56 feet perpendicularly distant Northerly from said control line opposite Engineer Station 75+78.99; thence North 89°08'10" East 311.82 feet to a point 63.16 feet radially distant Northerly from control line opposite Engineer Station 78+90.23; thence North 74°09'54" East 88.86 feet to a point 85.25 feet radially distant Northerly from said control line opposite Engineer Station 79+75.74 and the beginning of a non-tangent 154.32 foot radius curve to the right (Note: Radius bears South 15°50'09" East); thence Easterly along the arc of said curve 40.14 feet through a delta of 14°54'07" (Note: Chord to said curve bears North 81°36'55" East for a distance of 40.02 feet) to a point 90.31 feet radially distant Northerly from said control line opposite Engineer Station 80+15.14 and the beginning of a non-tangent 1273.69 foot radius curve to the right (Note: Radius bears South 00°59'50" East) thence Easterly along the arc of said curve 106.27 feet through a delta of 04°46'50" (Note: Chord to said curve bears South 88°36'25" East for a distance of 106.24 feet) to a point of reverse curvature with a radius of 1988.00 feet, which point is 86.31 feet radially distant Northerly from said control line opposite Engineer Station 81+20.50; thence Easterly along the arc of said curve 144.53 feet through a delta of 04°09'56" (Note: Chord to said curve bears South 88°17'58" East for a distance of 144.50 feet) to a point 81.47 feet perpendicularly distant Northerly from said control line opposite Engineer Station 82+64.34; thence North 89°37'04" East 45.19 feet to a point 81.69 feet perpendicularly distant Northerly from said control line opposite Engineer Station 83+09.53; thence North

44°19'52" East 41.12 feet to a point 11.05 feet perpendicularly distant Northerly from said control line opposite Engineer Station 83+38.32; thence North 89°46'59" East 17.09 feet to the Easterly right-of-way line Redwood Road at a point 111.08 feet perpendicularly distant Northerly from said control line opposite Engineer Station 83+55.40; thence South 00°03'46" East 25.75 feet along said Easterly right-of-way line to said Northerly right-of-way line of 5400 South Street, thence along said Northerly right-of-way line the following five (5) courses and distances: (1) South 73°38'24" West 114.46 feet; thence (2) South 89°53'41" West 126.78 feet to the beginning of a 11512.16 foot radius curve to the left; thence (3) Westerly along the arc of said curve 401.85 feet through a delta of 02°00'00" (Note: Chord to said curve bears South 88°53'41" West for a distance of 401.83 feet); thence (4) South 87°53'41" West 173.03 feet to the beginning of a 11406.16 foot radius curve to the right; thence (5) Westerly along the arc of said curve 116.70 feet through a delta of 00°35'10" (Note: Chord to said curve bears South 88°11'16" West for a distance of 116.68 feet) to the point of beginning. The above described parcel of land contains 16,970 square feet or 0.390 acres in area, more or less. (Note: Rotate all bearings in the above description 0°01'11" clockwise to obtain highway bearings.)

Also less and excepting any and all abutter's rights of the above-referenced less and excepting fee to the center of the existing right-of-way appurtenant to the less and excepting property.

+++

EXHIBIT A-1
PROJECT SITE PLAN

NO.	DATE	BY	DESCRIPTION
1	10/10/11	JL	ISSUED FOR PERMIT
2	10/10/11	JL	ISSUED FOR PERMIT
3	10/10/11	JL	ISSUED FOR PERMIT
4	10/10/11	JL	ISSUED FOR PERMIT
5	10/10/11	JL	ISSUED FOR PERMIT
6	10/10/11	JL	ISSUED FOR PERMIT
7	10/10/11	JL	ISSUED FOR PERMIT
8	10/10/11	JL	ISSUED FOR PERMIT
9	10/10/11	JL	ISSUED FOR PERMIT
10	10/10/11	JL	ISSUED FOR PERMIT

LEGACY
REAL ESTATE INVESTMENTS

CONSTRUCTION DOCUMENTS FOR
LEGACY REAL ESTATE INVESTMENTS
5400 SOUTH & REDWOOD ROAD
TAYLORSVILLE, UTAH 84123

SITE

SITE LEGEND

--- PROPERTY BOUNDARY LINE
 --- EXISTING PROPERTY BOUNDARY LINE
 --- EXISTING LOT
 --- EXISTING DRIVE
 --- EXISTING SIDEWALK
 --- EXISTING CURB
 --- EXISTING PAVEMENT
 --- EXISTING UTILITY
 --- EXISTING TREE
 --- EXISTING FENCE
 --- EXISTING WALL
 --- EXISTING ROOF
 --- EXISTING FLOOR
 --- EXISTING CEILING
 --- EXISTING STAIR
 --- EXISTING ELEVATOR
 --- EXISTING MECHANICAL
 --- EXISTING ELECTRICAL
 --- EXISTING PLUMBING
 --- EXISTING HVAC
 --- EXISTING LIGHTING
 --- EXISTING SECURITY
 --- EXISTING ACCESS
 --- EXISTING SIGNAGE
 --- EXISTING LANDSCAPE
 --- EXISTING SITEWORK
 --- EXISTING UTILITIES
 --- EXISTING STRUCTURES
 --- EXISTING EQUIPMENT
 --- EXISTING MATERIALS
 --- EXISTING FINISHES
 --- EXISTING FIXTURES
 --- EXISTING FURNITURE
 --- EXISTING APPLIANCES
 --- EXISTING MISC. ITEMS



BUILDING AREA

TXRH PROTECTED AREA

TXRH PROTECTED ACCESS

BASIS OF BEARING
 ALL BEARING MEASUREMENTS FROM THE CENTER POINT OF THE EAST BOUNDARY CORNER OF SECTION 16, T4S, R1E, S11W, DISTRICT 12, COLUMBIAN ZONING MAP NO. 2004, LAY 103, COUNTY OF KANE, UTAH, AS SHOWN ON THE LAST CORRECTED VERSION OF A MAP OF SAID SECTION OF RECORD.

BENCHMARK
 ALL BENCHMARK MEASUREMENTS FROM THE CENTER POINT OF THE EAST BOUNDARY CORNER OF SECTION 16, T4S, R1E, S11W, DISTRICT 12, COLUMBIAN ZONING MAP NO. 2004, LAY 103, COUNTY OF KANE, UTAH, AS SHOWN ON THE LAST CORRECTED VERSION OF A MAP OF SAID SECTION OF RECORD.

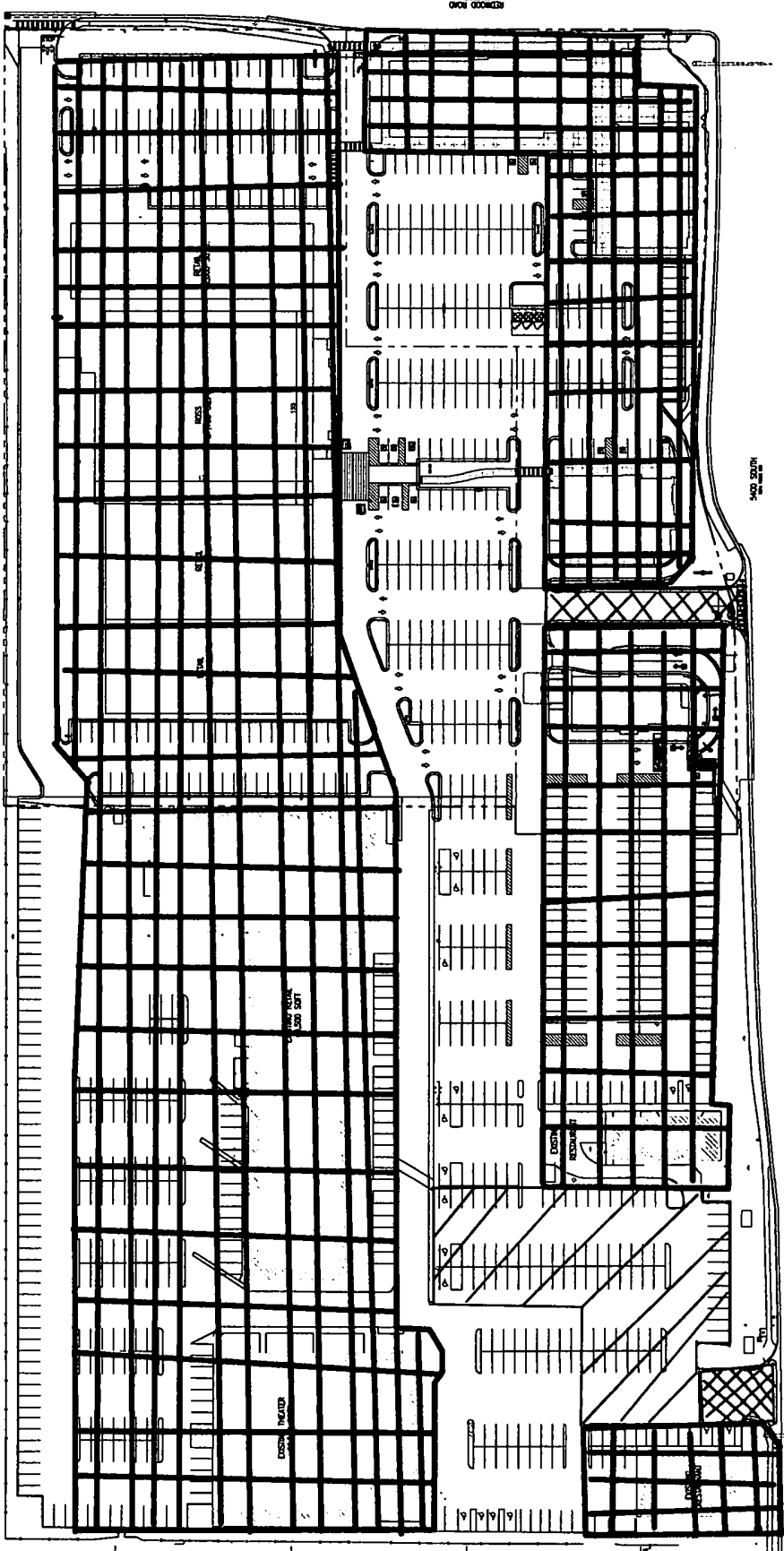


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