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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
NANCY DUBONNET ESQ  
2082 MICHELSON DR #450  
IRVINE CA 92612  
BY: LHP, DEPUTY - WI 24 P.

RECORDING REQUESTED BY )  
& WHEN RECORDED MAIL TO: )

Nancy Dubonnet, Esq. )  
2082 Michelson Drive, Suite 450 )  
Irvine, CA 92612 )

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Space above for Recorder's Use

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND  
GRANTS OF EASEMENTS  
FOR  
SANDY MALL SUBDIVISION  
SANDY, UTAH**

This Declaration of Conditions, Covenants and Restrictions and Grants of Easements (this "**Declaration**") is made, granted, imposed and declared as of March 8, 2016, by FPA SANDY MALL ASSOCIATES, LLC, a Delaware limited liability company, hereafter referred to as "**Declarant**".

WHEREAS, Declarant, is the owner of those certain tracts or parcels of land located in the City of Sandy, County of Salt Lake, State of Utah (hereafter called the "**Property**" or "**Shopping Center**"), as is more particularly described on **Exhibit A** attached hereto and as shown on Site Plan attached as **Exhibit B** (the "**Site Plan**"). The Site Plan identifies specific parcels which may be referred to in this Declaration as "**Lot 1**", "**Lot 2**", "**Lot 3**", "**Lot 4**", "**Lot 5**", "**Lot 6**", "**Lot 7**" and "**Lot 8**". As used in this Declaration, each such parcel is individually referred to as a "**Lot**," and two or more are referred to as "**Lots**".

WHEREAS, Declarant intends to sell one or more Lots, and therefore separate from common ownership with the Shopping Center; and

WHEREAS, in order to facilitate the development of the Shopping Center as an integrated commercial retail shopping center substantially as shown on Site Plan and to protect the character and intent of the development, Declarant desires to establish a common plan for development, use and maintenance of the entire Property as an integrated development, designed to protect and enhance the values of each of the Lots and the Property as a whole, for the benefit of the Property and Declarant and its transferees, successors and assigns.

NOW, THEREFORE, Declarant does hereby declare that the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions and regulations, which shall be binding upon and inure to the benefit of Declarant and all parties acquiring or having any right title or interest in any portion of the Property, their respective heirs, executors, administrators, personal representatives, successors and assigns.

1. Definitions.

A. Defined Terms. Wherever used in this Declaration with initial capitalization, the terms set forth below shall have (unless otherwise expressly stated) the following meanings:

(1) "**Building Area**" shall mean all those areas on each Lot shown as occupied by a building, designated as "Building Area" or lying within any building limit line or similar such designation (if any) required by applicable building codes, as may be shown on the Site Plan attached hereto which may be from time to time covered by a building or other commercial structure.

(2) "**Common Area**"; "**Service Facilities**" shall mean all portions of the Property which are improved from time to time for the general use and enjoyment of

each Owner and its Permittees as envisioned by this Declaration, including, without limitation, Entryways, Trafficways, sidewalks, areas containing signs or structures advertising the common name for the Property together with the signs or structures constructed thereon (if any), and landscaped areas. "**Common Area**" shall not include any portion of a Lot which is improved with buildings or other commercial structures and those building-related improvements and structures which extend beyond a building's exterior walls such as back-flow preventers, transformers, loading docks, ramps and truck wells, trash compactors, trash enclosures, canopies and supporting posts or columns and other such items which serve a particular building, any drive up or drive through customer service facilities, and dining or patio areas which are reserved to one or more particular tenants, all of which shall be deemed part of such building to which attached and which they serve, and may be herein referred to as "**Service Facilities**," or any portion which is designated on the Site Plan from time to time (at Declarant's sole discretion) as not part of the Common Area. Any Common Areas which exist from time to time within Building Area shown on the Site Plan shall not be considered permanent Common Area, and can be removed from the Common Area at the sole discretion of the Owner of the Lot on which such Building Area is located. Inclusion of an item or improvement within the definitions hereof shall not imply it will exist or be installed by Declarant.

(3) "**County**" shall mean Salt Lake County, Utah. "**City**" shall mean Sandy, Utah.

(4) "**Declarant**" shall mean FPA SANDY MALL ASSOCIATES, LLC, a Delaware limited liability company. At such time as such original Declarant Transfers its last ownership interest in any Lot to a third party, in connection with such Transfer, Declarant may designate the Owner that is to act as successor Declarant hereunder. At such time as any such successor Declarant Transfers its last ownership interest in a Lot upon which such status as Declarant was established, in connection with such Transfer, such successor Declarant may designate the Owner that is to act as successor Declarant hereunder, and so on. If any Declarant fails to so designate a successor Declarant, then, for purposes of any approval required of Declarant hereunder, "**Declarant**" shall mean the Owner or Owners owning fee simple title to at least an aggregate of fifty-one percent (51%) of the acreage of the Property from time to time. Any designation of a successor Declarant pursuant to the foregoing shall be memorialized by recording a notice in the Official Records of the County setting forth the identity and address of the successor Declarant, and any such notice shall be deemed a "**Mandatory Amendment**" hereto.

(5) "**Entryways**" shall mean curb cuts which provide vehicular access between a Lot and the public streets adjacent to the Property and which are designated as "Access" as shown on the Site Plan.

(6) "**Occupant**" shall mean any owner, tenant, subtenant, licensee, concessionaire or other party occupying or having the right to occupy any portion of any Lot.

(7) "**Owner**" shall mean each person or entity, or each aggregate group of persons or entities, which hold recorded fee simple ownership interest(s) in the entirety of one or more Lots. If there is more than one person or entity which holds a record interest in a Lot, each such person or entity shall be jointly and severally liable for the performance of all obligations hereunder of the Owner of that Lot. For the purpose of exercising voting and other rights by each Lot Owner hereunder (where such rights are specifically provided for herein, if at all), each Lot shall be entitled to one (1) whole vote, regardless of the number of Owners holding the fee interests therein. If multiple Owners of a Lot cannot agree in the manner in which that Lot's vote is to be cast, then the vote of that Lot shall not be counted.

(8) "**Permitees**" shall mean Occupants, and the officers, directors, partners, members, employees, licensees, agents, contractors, invitees, visitors, customers and tenants of a Lot Owner (and each such tenant's subtenants and its/their officers, directors, partners, members, employees, licensees, agents, contractors, invitees, visitors and customers).

(9) "**Transfer**" shall mean any conveyance of an Owner's fee simple interest in a Lot, whether by sale, gift, foreclosure, deed-in-lieu of foreclosure or otherwise.

2. Declaration; Easements and Covenants Run with Land. Declarant hereby covenants, grants and declares that (a) the easement and covenants herein granted and declared are superior and paramount to the rights of the party declaring, granting and making the same, its successors and assigns, in or on the estate so burdened; and, (b) the Property, each Lot and every part thereof or interest therein, is held and shall hereafter be held, transferred, hypothecated, encumbered, sold, conveyed, leased, used, improved, owned and occupied subject to the covenants, conditions, restrictions, easements, equitable servitudes, liens, charges, limitations, reservations and other restrictions set forth herein, all of which are declared and agreed to be in furtherance of a common plan for the development, use and operation of each and all of the Lots, for the purpose of enhancing, preserving and protecting the value of the Property and each part thereof and interest therein. All of said covenants, conditions, restrictions, easements, equitable servitudes, liens, charges, limitations, reservations and other restrictions shall run with the land and shall inure to and pass with the Property and each portion of or interest therein, and will apply to and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof or interest therein. All and each of said covenants, conditions, restrictions, easements, equitable servitudes, liens, charges, limitations, reservations and other restrictions are further imposed upon the Property as mutual and reciprocal equitable servitudes in favor of the Property and each and every portion thereof and interest therein. Each covenant to do or refrain from doing some act on a Lot (i) is a burden upon such Lot for the benefit of the other Lot(s); (ii) runs with each Lot; and (iii) shall benefit or bind each owner of a Lot during its ownership of such Lot, or any portion thereof or interest therein, however acquired. Each grantee of a conveyance or purchaser or encumbrancer of a Lot or any interest in the Property accepts the same subject to, and agrees to be bound by, all

of the easements, covenants, liens, charges, restrictions, reservations and limitations set forth herein.

3. Grants and Establishment of Easements. Subject to any express conditions, limitations or reservations set forth in this Declaration, Declarant hereby grants and declares that the Lots shall be burdened by and subject to the following perpetual, non-exclusive easements over, across and upon the servient Lots, each of which shall be appurtenant to each Lot benefited thereby and are for the benefit, use and enjoyment of the Owner of such benefitted Lot and the Permittees thereof:

A. Easements for Access and Passage. An easement (the "**Access Easement**") for reasonable access, ingress and egress and passage over all paved driveways, roadways, access points to public streets across the Entryways shown on the Site Plan (as they may be established and/or relocated by Declarant from time to time), walkways and other areas paved or otherwise improved for the passage of vehicles and/or pedestrians as presently or hereafter constructed from time to time and constituting a part of the Common Area of the Property (all, collectively, "**Trafficways**"), so as to provide for the passage of motor vehicles and pedestrians between and over all portions of the Common Area intended for such purposes, and to and from all abutting streets or rights of way furnishing access to the Property. If the maintenance and repair of any such areas will require the temporary interference with the use thereof, it shall be performed in a manner which minimizes such interference as much as reasonably possible and the party performing such work shall provide Declarant at least five (5) days' prior written notice, describing the work, duration and effect. Declarant shall have the right to impose conditions on such work, including a requirement the work be performed only during certain hours. Other than in designated loading areas (as shown on the Site Plan and/or as designated by Declarant from time to time), the Common Area shall not at any time be used for the parking of trucks, or the loading or unloading thereof, except for (1) the temporary parking, loading or unloading of trucks during and in connection with the construction or demolition of buildings, but only in such areas as designated by Declarant; and (2) the servicing and supplying of a building which cannot be serviced and supplied from areas designated as loading areas, provided that any such servicing shall be diligently and promptly performed and shall not interfere with the normal business operations of, and customer and delivery access to, other Occupants.

B. Parking Easements. An easement for the parking of vehicles in the parking areas designated from time to time as part of the Common Areas of the Lots, as such parking areas are indicated on the Site Plan (or, if not so indicated, as they are constructed originally) and, subject to the provisions of this Declaration, as the same may be modified from time to time by the Owner of a Lot containing parking area (the "**Parking Easement**"). The Parking Easement is for parking by the Owner and its Permittees in connection only with the businesses operated from time to time at the Lots. In no event shall the Parking Easement be used for overnight parking, storage or other purposes that shall constitute an unreasonably prolonged use of the Parking Easement, except as Declarant may allow in its good faith discretion. Declarant shall have the right to impose rules and regulations with regard to parking in its good faith discretion, including the

requirement that all employees of Occupants park in a designated area or areas, and to enforce such rules and regulations by any reasonable means.

C. General Traffic Area Requirements. The portions of the Common Area subject to the Access Easements and Parking Easements granted herein are sometimes referred to as "**Traffic Area.**" Each Owner shall cause the Traffic Area on its Lot to at all times be maintained to provide a level and smooth connection with the pavement on the Traffic Area on the adjacent Lot(s) and any Entryway on its Lot. Subject to rights of an Owner to remove any portion of Building Area from its temporary use as Common Area provided for herein, after improvement of any portion of a Lot for use as a Traffic Area, the Owner thereof shall not cause or allow any fence, barrier or other obstruction to be placed thereon which will impede the free flow of traffic between the Lots. So long as the free flow of traffic between the Lots is not unreasonably impeded, an Owner may improve the Traffic Areas on its Lot with lanes, curbs, parking bumpers, light poles, directional signs, refuse collection areas and enclosures and hydrants, transformers and other utility equipment which by its nature or governmental requirements is reasonably situated above-ground. The rights of any Owner and its Permittees hereunder to park on another Owner's Lot shall extend only to temporary parking for customers, employees, deliveries and other similar purposes; this easement does not allow an Owner and its Permittees to store automobiles or other vehicles upon, or otherwise unreasonably burden, another Owner's Lot. Further, the easement for parking granted herein shall be subject to the requirement of reasonable use by the grantee Owners and their Permittees; no Owner shall allow its Permittees to over-park or otherwise use the parking easement on the other Owners' Lots in an unreasonable manner or a manner which interferes with or burdens the normal use of the parking area by the grantor Owner and its Permittees. Each grantee Owner agrees it and its Permittees will not overburden the parking facilities and agrees to cooperate with the grantor Owner and its Permittees in the use of parking facilities. If a grantor Owner reasonably determines that the parking on its Lot is being overused or used in an unreasonable manner or a manner not contemplated by the spirit and intent of this Declaration, it shall have the right to reserve specific parking spaces for the use of its building equal to the number of parking spaces required by code to serve the building from time to time, and to take such other steps necessary to correct such condition, including but not limited to granting parking permits to its Permittees, policing the use by others and towing non-permitted parked vehicles. In addition, a reasonable and limited number of parking spaces directly fronting against or in close proximity to a building may be marked with a parking restriction (e.g., "20 Minute Parking Only" or "For Take-Out Patrons Only") if the Owner of the Lot containing such parking spaces elects.

D. Easements for Utilities and Drainage and Related Rights and Obligations.

(1) Easements in, over, under, along and across those portions of each Lot (excluding any portion on which structures have been constructed and/or designated on the Site Plan as Building Area) which are reasonably necessary or convenient for the installation, operation, maintenance, use, repair, replacement and renewal of utility and drainage lines or systems serving the grantee's Lot, including, without limitation, sanitary sewers, storm drains, water, irrigation, gas, electrical, telephone,

telecommunication and CATV lines (collectively, "**Utilities**"). Unless necessary or required by law or the utility service provider, all Utilities shall be installed below ground; provided, however, that each Lot is hereby burdened with an easement allowing surface drainage of storm water over the portions of such Lot not improved with structures to the point of entry into the public storm drainage system, and each Owner agrees to maintain the grading and surface of each Lot so as to allow for the coordinated surface drainage of storm water in the manner in which the Property is initially improved, or in such alternative manner as the affected Lot Owners may reasonably agree in order to provide for adequate surface drainage of storm water for the Property. The easements granted herein include the right of access to the grantor's Lot for the purposes described, but subject to the terms, herein. The grantee shall maintain and repair all Utilities on the grantor's Lot which exclusively serve the grantee's Lot, in a good and safe condition, at the grantee's sole cost. The duty and costs of maintaining, repairing and replacing any Utilities which jointly serve more than one Lot shall be performed by the Owner of the Lot containing the portion of the Utilities requiring such work (unless the Owners agree otherwise) and the costs of such work shall be shared by the benefitted Lot Owners pro rata, on the basis of the land area of each benefitted Lot divided by the total land area of the benefitted Lots. The installation, operation, maintenance, repair and replacement of such facilities shall be done in a manner so as to not materially or unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Property.

(2) If necessary or reasonably desirable for the reconstruction or alteration of any existing structures, or for the addition of any new structures (where the same is allowed by this Declaration), on a Lot, the Owner of such Lot shall have the right to relocate any Utilities on its Lot, and to perform on any other Lot such work as is necessary to accommodate such relocation, subject to the provisions of this Declaration.

(3) Prior to performing any relocation, installation, repair, maintenance or replacement work on Utilities which will occur on, or which could affect utility service to, another Lot, the party performing such work (the "**Performing Party**") shall provide the Owner(s) of the affected Lot(s) (the "**Non-Performing Party**") with (a) notice of such work at least thirty (30) days in advance (or such shorter time period as reasonable in the work is urgently needed); and (b) a work plan describing the work to be done, including the dates and hours of such work, the details of the work and any anticipated effect upon the use of the Non Performing Party's Lot. If the Non-Performing Party reasonably objects to any aspect of the proposed work, the Performing Party shall modify the work plan as reasonably requested to obtain the Non-Performing Party's approval. The Performing Party shall also, prior to starting work, provide the Non-Performing Party reasonable evidence that the Performing Owner and its contractor each carries adequate (at least one million dollars (\$1,000,000) per occurrence) public liability insurance, along with an endorsement and certificate naming the Non-Performing Party and any lessee(s) of the Non-Performing Party's Lot as an additional insured. The Performing Party shall indemnify, defend and hold harmless the Non-Performing Party from any liability, liens, claims, damage, cost or expense (including, without limitation, legal fees, costs and expenses), arising from such work, shall cause the work to be performed so as to not interfere with the business operations on the Non-Performing Party's Lot

(including performing work after normal business hours if necessary to prevent disruption of the Non-Performing Party's business or use of the Common Area by its Permittees) and to otherwise cause the least possible interference with the use and occupancy of the Non-Performing Party's Lot, and shall cause the work to be performed diligently in a good and workmanlike manner and to be completed expeditiously and without liens or claims. The Performing Party shall restore the Non-Performing Party's Lot to its pre-existing condition at the completion of such work and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of the same. If the Owners of the Lots determine that joint installation, maintenance or use of the utilities is economical or convenient, or if the same is required by the utility provider, they shall cooperate therein and share the costs in an equitable manner. The rights of an Owner under this Section shall extend to the lessee of such Owner's entire Lot (but not any lessee of less than the entire Lot); provided that both the Owner and such lessee shall be jointly and severally liable in connection with any work performed by the lessee hereunder.

E. Building Encroachments: An encroachment easement for any portion of any building or structure located on a Lot which may encroach into or upon an adjoining Lot(s); provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this Section shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition within one (1) year following a casualty or condemnation.

F. No Charge for Use of Easements. No Lot Owner shall impose any charge or fee of any type upon the benefited Lot or its Owner or Permittees for the use and enjoyment of the easement rights granted herein, except as may be expressly provided for in this Declaration or unless required by law.

G. Declarant's Reserved Rights. Notwithstanding any other provisions in this Declaration to the contrary, Declarant shall have the right to allow certain Owners and/or Occupants to modify and/or have exclusive use of certain portions of the Common Area, permanently or from time to time, including but not limited to granting of exclusive parking rights, subject to such reasonable requirements as Declarant may impose and provided that the same does not materially and negatively impact the availability of reasonable amounts of parking available to the Property overall, or convenient access and travel between Lots and public streets.

#### 4. Maintenance of Lots.

A. Except as may otherwise be specified in this Declaration, each Owner shall at all times perform such maintenance, repair and replacement as necessary to keep the Common Areas, landscaping, signs, buildings, Service Facilities and all other improvements located on its Lot in neat, clean, safe and slightly condition and in good



order and repair, commensurate with high-quality commercial projects in the locale, all at such Owner's sole cost and expense. Without limiting the generality of the foregoing, this obligation shall include periodic painting and cleaning of all painted building surfaces, power-washing of building exteriors and sidewalks, the sweeping of the parking areas and removal of dirt from all Common Areas, the prompt removal of trash, refuse and graffiti, and the watering and maintenance of landscaping in accordance with good commercial practices. If there is any damage or destruction of any improvements on a Lot, the Owner thereof shall promptly remove all debris and repair, rebuild or restore the same, or if a building or structure, shall demolish and remove the same and leave the building areas in a clean and neat condition, covered with a one inch (1") asphalt dust cap to control dust and dirt. Notwithstanding the foregoing, however, if any portion of the Common Area is damaged or destroyed by casualty or taken by eminent domain, the Owner of the Lot on which the same is located shall diligently and expeditiously restore the same at its own cost so that the rights of the other Owners and their Permittees to reasonable travel across the Common Area and ingress/egress to/from public streets is restored and protected.

B. Notwithstanding the provisions of Section 4(A), the Declarant shall be responsible for engaging an independent contractor for the removal of snow and ice from all Trafficways, Traffic Areas, Entryways and sidewalks on an as-needed basis (the "**Snow Removal Services**"), and the Owner of each Lot grants Declarant and such independent contractor an easement for such purposes. The Owner of each Lot shall be responsible for snow removal from any Service Facilities on such Owner's Lot. The Owner of each Lot shall be responsible for its pro rata share of the cost of the Snow Removal Services, on the basis of the land area of each Lot divided by the total land area of the Property, and shall reimburse the Declarant for the same within ten (10) days after receipt of an invoice therefor.

5. Common Area.

A. General Restrictions. No Owner (other than Declarant) shall (i) alter, modify, reconfigure, relocate and/or remove the Common Areas on its Lot (other than an Owner's right hereunder to remove any Building Area from temporary use as Common Area, subject to the restrictions and conditions in this Declaration); or, (ii) place or allow buildings or other structures in the Common Areas on its Lot (subject to an Owner's right to expand, alter or construct buildings within its Lot boundaries subject to the restrictions in Section 8, below).

B. Intentionally omitted.

C. Protected Entryways. Without limiting any other provisions of this Declaration, those Entryways which are designated on the Site Plan as "**Protected Entryways**" cannot be closed-off, restricted, moved or otherwise modified without the prior written consent of Declarant, in its sole and absolute discretion. If any maintenance or repair work is necessary which requires the restriction or closing-off of any Protected Entryway, the party performing such work shall provide Declarant at least five (5) days' prior written notice, describing the work, duration and effect on the Protected Entryway.

Declarant shall have the right to impose conditions on such work, including a requirement the Protected Entryway be closed or affected only during certain hours.

D. Obligation of Owners to Keep Common Area Lighted. Each Owner shall at its own cost keep the lights illuminating the Common Area on its Lot ("**Common Area Lights**") on during such periods as Declarant may determine from time to time or as zoning restrictions so allow. The Common Area Lights on an Owner's Lot shall be maintained in good operating condition at all times, with any damaged or non-functioning components to be immediately replaced. All Common Area Lights shall be harmonious with the Common Area Lights in the remainder of the Property and shall comply with such standards as Declarant shall reasonably determine from time to time, including type, brightness and other factors. Declarant shall have an easement over all Lots allowing Declarant to access the electrical panel and the Common Area Lights on each Lot, so that Declarant may operate the Common Area Lights in compliance with this Declaration, if the Owner of a Lot fails to do so, and the Owner shall be liable for all costs incurred by Declarant in any such event.

6. Property Signage.

A. Restrictions on New Signs. No monument or pylon signs shall be constructed in the Property without the written consent of Declarant.

B. Sign Criteria & Maintenance. Subject to applicable governmental approvals, all signs within the Property, including building fascia signs and signs located on any free-standing monument, pylon or other signage ("**Signs**"), shall conform to the signage requirements and sign criteria which may be adopted by Declarant from time to time (the "**Sign Criteria**"); provided, any new or changed Sign Criteria shall not be enforced so as to require an Occupant to remove or alter any sign which it had the specific right to install prior to such change in the Sign Criteria. Declarant shall have the right to grant exemptions from the Sign Criteria as it determines in its sole discretion. Each Owner, Occupant or other interested persons shall be obligated to contact Declarant to obtain the most recent the Sign Criteria in order to determine the requirements thereof. Any Owner or Occupant that installs, maintains, operates, repairs, remodels or replaces any sign without doing so shall do so at its own risk and shall be solely liable for all costs to remove, repair or modify its sign(s) and otherwise achieve compliance with the Sign Criteria. Each Owner, at its own cost, shall (i) cause all signs on its Lot to satisfy all applicable governmental requirements; and (ii) cause all signs (including structure, panels and utilities serving the sign) located on its Lot to be maintained in good, clean and first-class state of order and repair, including the prompt replacement of broken, faded or damaged panels or non-functioning illuminating components and the prompt removal of graffiti.

C. No Other Signs Permitted. Except as otherwise permitted by Declarant in its sole and absolute discretion, there shall be no other signs in the Property except as permitted hereunder and as permitted under the Sign Criteria, except such directional signs and other signs as are typical for common areas (all of which shall be

subject to Declarant's consent before installation). Any Owner may have more restrictive signage provisions in a lease with its Occupant than are provided for herein. No Owner shall place or allow on its Lot any signs advertising space or land for sale or lease, unless such sign and the location thereof has first been approved in writing by Declarant, and any such sign which is so approved shall only be maintained for a reasonably temporary period and shall be maintained in a first class condition and shall not block the visibility of any other signs or interfere with the convenient use of the common area.

7. Use Restrictions.

A. General Restrictions. Each Owner shall ensure that its Lot is improved, used, occupied, maintained and operated only in compliance with all applicable laws, statutes, regulations and ordinances of governmental bodies.

B. Restricted and Prohibited Uses. Each Owner shall ensure that its Lot is not used in whole or in part in violation of the provisions set forth on **Exhibit C** hereto.

8. Construction or Alterations of Buildings.

A. Except as otherwise permitted by Declarant in its commercially reasonable discretion, each building in the Property shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Property. No building may be constructed nor the exterior of any building changed in any way (including, without limitation, signs and color) without the prior written approval of Declarant. Declarant has the right, but is not obligated to, impose on the Property development guidelines to assist and guide in the development of the Lots. An Owner should obtain a copy of any development guidelines promulgated by Declarant prior to beginning the design of any improvements or any work whatsoever on a Lot. In the case of conflict between the terms and provisions of the development guidelines and this Declaration, the terms and provisions of this Declaration shall control. No such guidelines, if any, shall obligate Declarant to enforce the same in any manner, nor shall they impose upon Declarant any liability for any review, failure to review or approval or failure to approve any particular improvement.

B. Before the construction or modification of any building is commenced, sufficient information shall be submitted to Declarant to enable it to make a determination as to such compatibility and harmony, as Declarant may request in its commercially reasonable discretion. Such information shall include the following: (a) a site plan showing the location, dimensions and orientation of the proposed building(s), other structures, means of ingress and egress, driveway and traffic patterns; (b) drawings and detail of all exterior surfaces, showing elevations, and including the color, quality and type of exterior construction materials and the height and size of each building; (c) drawings and design specifications of all proposed exterior signs or graphics including the colors thereof and the quality and type of materials to be used and the manner of illumination; (d) landscaping plans; and (e) all such other information as may be reasonably required to determine the location, scale, design, character, style and appearance of such Owner's

intended improvements. Declarant shall have not less than thirty (30) days following receipt of all such information to either approve or disapprove of the request. The portion of the constructing Owner's Lot to be used as the construction staging area shall be subject to Declarant's prior written approval.

C. Every building in the Property shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office or applicable local authorities or be constructed in such a manner as to not adversely affect the fire rating of any other building in the Property. The purpose of this provision is to allow each building in the Property to be fire rated as a separate and distinct unit without deficiency charge.

D. Declarant shall not be liable for any acts or omissions of any nature whatsoever, including, without limitation, any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any submitted plans, except to the extent of its gross negligence or willful misconduct. Every person who submits any plans for approval as herein provided agrees that it will not bring any action or suit against the Declarant or its respective agents, employees, members, successors or assigns, to recover any damages as a result thereof.

E. All buildings and other structures on a Lot may only be located within the Building Area for the Lot shown on the Site Plan, except for Service Facilities which have first been approved in writing by Declarant. Except as Declarant may allow in its sole and absolute discretion, all Service Facilities shall be attractively screened from view from the parking areas. No building shall be constructed in any manner as to adversely affect the structural integrity of any other building in the Property. Buildings may be constructed, expanded or reconstructed anywhere within a Lot so long as (i) applicable set-back and other planning and zoning requirements are followed; (ii) the number of parking spaces located on the Lot in question is not less than the amount required by applicable parking codes for the use of that Lot; (iii) the number of parking spaces available in the entire Property is not reduced below the total amount required by applicable parking codes; and, (iv) the Protected Entryways are not affected.

F. Once an Owner commences any work of improvement, repair, alteration or addition on its Lot, the Owner shall diligently continue such work to full completion, without delay or cessation except for causes beyond the reasonable control of the Owner. No work shall interfere, obstruct or delay (i) access between any portion of the Property and public streets; (ii) access between and among the Lots; (iii) customer parking on any other Owner's Lot; or (iv) receiving of merchandise by any other Lot or the conduct of business of the Occupants thereof. A constructing Owner shall cause all contractors and others involved in such work to abide by reasonable rules and regulations to avoid disturbance of the Occupants of the other Lots, and to follow all proper safety practices. A constructing Owner shall cause proper dust, noise and vibration control measures to be utilized during construction, shall cause all mud, dirt and debris to be cleaned from other Lots, the Common Area on its Lot and the adjoining public streets daily, and shall otherwise keep the construction zone and adjoining areas in a reasonably neat and clean

condition. The constructing Owner shall promptly repair at its own cost any damage to the Common Areas and any adjoining Lot arising in connection with the construction work, so that the same are restored to the condition existing before the construction. A constructing Owner shall not allow any liens arising from construction to attach to any portion of the Property.

G. The constructing Owner shall indemnify, defend and hold harmless all non-constructing Owners and Occupants from any and all liability, claims, damages, expenses (including, without limitation, reasonably legal fees, costs and expenses, including any on appeal, and costs), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, except to the extent caused by the sole, active negligence of the indemnitee.

9. Insurance Obligations of Owners.

A. Liability Insurance. Each Owner shall obtain and keep in full force and effect at all times, extended commercial liability insurance covering public liability for personal injury, death, or property damage, arising out of the occupancy, use or maintenance of the Owner's Lot for at least One Million Dollars (\$1,000,000) combined single limit per occurrence for personal injury, death and property damage. Each liability insurance policy maintained by an Owner hereunder shall be primary and noncontributory; shall provide for severability of interests; and, shall provide that an act or omission of the insureds shall not void or reduce coverage as to the additional insureds. Each Owner's liability insurance shall be endorsed to name each other Owner in the Property as an additional insured (and any tenants which such other Owner requests also be named), and upon request the Owner shall provided the requesting Owner with a copy of such endorsement and an additional insured certificate.

B. Casualty Insurance. Each Owner shall obtain and keep in full force and effect at all times casualty, fire and extended coverage insurance with respect to all improvements on its Lot. The insurance shall include coverage for vandalism and malicious mischief. The casualty insurance shall be for not less than One Hundred Percent (100%) of the full insurable value of the improvements based on current actual replacement cost (exclusive of foundations, footings or excavation costs). An Owner may satisfy its obligation hereunder by requiring any Occupant of its Lot to provide and keep in force the required insurance.

C. Release and Waiver of Subrogation. Each Owner (the "**Releasing Owner**") hereby releases and waives for itself and on behalf of its insurer (to the extent allowed by law and without affecting any insurance coverage maintained by the Releasing Owner) each and all other Owners and Occupants (the "**Released Parties**") from any liability for any loss or damage to any property of the Releasing Owner located upon any portion of the Property, where such loss or damage is of the type generally covered under the insurance required to be carried by this Declaration, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss. Each Releasing Owner shall notify its casualty insurer of the provisions hereof and shall use its

best efforts to obtain therefrom (without, however, being required to pay any additional costs), a waiver of the insurer's right of subrogation against the Released Parties, by endorsement or otherwise. However, to the extent possible without violating any law or voiding any insurance coverage, failure to obtain such waiver shall not affect the release herein given. If an Owner's insurer will not give such a waiver, or will do so only with the payment of an additional fee, the Owner shall immediately notify the other Released Parties of such fact and allow the Released Owner to pay such fee to obtain such waiver.

D. No Liability of Declarant with Respect to Insurance. Notwithstanding anything in this Declaration to the contrary, Declarant shall have no duty or liability whatsoever to ensure that any Owner maintains insurance of any type or amount, or otherwise with respect to insurance which is carried or not carried by an Owner or any Occupant.

10. Indemnification. Except for such claims as are released pursuant to Section 9.C above (but only to the extent of such release), each Owner hereby agrees to indemnify, defend and hold harmless each other Owner and the Occupants of each other Owner's Lot from and against any and all liability, claims, damages, costs, expenses (including, without limitation, reasonable legal fees, costs and expenses and any of the same in connection with any arbitration and/ or appeal), suits, proceedings, causes of action, judgments and awards of any nature arising from any injury to or death of any person, or any damage to or destruction of any property, which arises from or is related to any act or omission of the indemnifying Owner or any events occurring on the indemnifying Owner's Lot (including the Common Area thereon) or the use, occupancy, construction, repairs, alterations, operations and maintenance of and on the indemnifying Owner's Lot, except to the extent caused by the sole negligence, gross negligence or willfully wrongful act of the indemnified person, its tenants, subtenants, agents, contractors or employees. The obligations of an indemnifying Owner hereunder shall extend to and include the principals, directors, officers, shareholders, partners, owners, members, trustees, employees and agents (including any property manager) of an Owner or Occupant which is indemnified hereunder.

11. Default.

A. Events of Default. The occurrence of any of the following events shall constitute a default under this Declaration (an Owner which is in default of this Declaration is hereafter referred to as a "**Defaulting Party**"; each Owner shall be responsible for any default of its Permittees):

(1) The failure to make any payment required hereunder within thirty (30) days after written demand.

(2) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration (other than a failure to pay as described in section A(i), above), within thirty (30) days after receipt of written notice from any other Owner describing such failure; provided, that if such failure cannot reasonably be cured

within such thirty (30) day period, the Defaulting Party shall have a reasonable time in which to cure the failure, so long as such cure is commenced promptly after receipt of such notice and is diligently pursued to completion.

B. Right to Cure. In the event of a default hereunder, the non-defaulting Owners, and each of them (hereafter, collectively and individually referred to as the "**Non-Defaulting Party(ies)**") shall have the right, but not the obligation, upon five (5) days' written notice, to cure the default for the account of and at the expense of the Defaulting Party; provided, that in the event of an emergency constituting a default (i.e., a condition threatening imminent damage to property or injury to persons) the Non-Defaulting Parties acting in good faith shall have the right to cure such default with or without advance notice, as is reasonable under the circumstances, provided the Defaulting Party is given notice as soon as possible thereafter. Any notice hereunder shall specify the nature of the default in detail, and shall describe in detail the actions to be undertaken in order to cure the claimed default. Any Non-Defaulting Party exercising cure rights hereunder shall have the right to enter the Lot of the Defaulting Party in order to effect such cure, in which event the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses in connection therewith, together with a fee equal to fifteen percent (15%) of such costs to compensate for the time spent in curing the matter.

C. Legal and Equitable Relief. Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against a Defaulting Party or any other person violating or attempting to violate the provisions of this Declaration, to stop or prevent such violation and recover damages therefor, including, without limitation, the seeking and enforcement of restraining orders and injunctions. In addition, each Non-Defaulting Party shall be entitled to file a statement of lien against the Lot of the Defaulting Party, and shall, upon the filing and until release or foreclosure thereof, have a lien against such Lot for the full amount then or thereafter owing, including interest, and together with all costs and expenses of collection, including reasonable attorneys' fees, which lien may be foreclosed in the manner for foreclosure of mortgages in the State of Utah.

D. Costs of Cure and Seeking Relief. If a Non-Defaulting Party shall exercise its right to cure a Defaulting Party's default hereunder, all costs and expenses incurred in connection therewith, together with interest as provided for below and all legal fees, costs and expenses of suit, shall be assessed against and paid by the Defaulting Party upon demand.

E. Remedies Cumulative; No Waiver. Any and all remedies available to the Non-Defaulting Parties hereunder shall be cumulative and non-exclusive, and the exercise of one or more remedies shall not constitute an election of remedies or otherwise serve to prevent the exercise of any and all other remedies provided at law or in equity for any default or actual or threatened violation of this Declaration.

F. Interest. Any amount due hereunder which is not paid on the date due shall bear interest from the date due until paid. The applicable interest rate shall be equal to the lower of (i) the maximum rate allowed by law; or, (ii) ten percent (10%) per annum.

G. Mortgagees Not Affected. The provisions of this paragraph, and any liens created hereby, shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the Lot of the Defaulting Party and the rights of the holder or holders of the debt secured thereby.

12. Estoppel Certificates; Nondisturbance. Any Owner may, at any time and from time to time, in connection with the sale, leasing, transfer or financing of the Owner's Lot or interest therein, deliver a written request to the other Owners requesting such Owners to certify in writing that, to the best of each Owner's knowledge, (i) this Declaration is in full force and effect and a binding obligation of each Owner and its Lot; (ii) this Declaration has not been amended or modified, or specifying the details of any amendment or modification; (iii) the requesting party is not in default hereunder or, if in default, to describe the nature and amount thereof; and (iv) such other information as the Owner requesting such statement may reasonably request. Each party receiving such a request shall execute and return the certificate within twenty (20) days after receipt thereof. Failure by a party to execute and return the certificate within such time shall be deemed an admission on that party's part that the information set forth in such certificate is true, complete, accurate and correct. The Owner shall cooperate to obtain non-disturbance agreements, consents, waivers and other agreements from lienholders, mortgagees, tenants and any other party with superior rights that might interfere with the rights, duties and obligations contemplated by this Declaration.

13. General Provisions.

A. Duration. The term of this Declaration and the benefits and burdens created hereby shall be effective as of the date of full execution and shall continue in full force and effect until the date which is fifty (50) years thereafter; provided, however, that the easements and other rights which are described herein as perpetual shall continue beyond such date in perpetuity.

B. Injunctive Relief. In the event of any violation or threatened violation of the provisions hereof, any Owner shall have the right to seek and obtain an injunction against such violation in a court of competent jurisdiction, and all Owners agree that damages shall not be an adequate remedy in such event.

C. Modification and Amendments; Mandatory Amendments. This Declaration may be amended, modified or terminated by Declarant without the consent of any other Owner, person or entity, and any document necessary or desirable to accomplish such purpose shall be deemed a "**Mandatory Amendment**". Notwithstanding the foregoing, however, from and after the date on which the original Declarant records a notice designating a party other than the original Declarant (or its affiliate or subsidiary) as



**“Declarant”** hereunder pursuant to the provisions of **Section 1**, above, the written consent of the Owner or Owners owning fee simple title to at least an aggregate of fifty-one percent (51%) of the acreage of the Property shall be required in order to amend, modify or terminate this Declaration. Further notwithstanding any of the foregoing, no amendment or modification made pursuant to this Section shall materially and adversely impact upon any Owner’s use and enjoyment of its Lot(s) as otherwise allowed under this Declaration, unless consented to by the Owner of such Lot(s). Any amendment, modification or termination of this Declaration shall only become effective when recorded in the real property records of the County. Where this Declaration allows Declarants to record a **“Mandatory Amendment”**, each Owner and Occupant of all or any portion of the Entire Property shall, within ten (10) days following receipt, execute, acknowledge sufficient for recording, and return to Declarants any such Mandatory Amendment as is submitted thereby. Declarant is empowered hereby to record such Mandatory Amendment against all Lots in the Property, and each Owner and Occupant hereby appoints Declarant as its attorney-in-fact to execute and record the Mandatory Amendment if the Owner or Occupant fails to do so within such time. If Declarant retains legal counsel and/or institutes legal action to force compliance with the requirements of this Section, the non-complying party shall pay and reimburse all legal fees, costs and expenses incurred as a result.

D. **Not a Public Dedication.** Nothing in this Declaration shall be deemed a gift or dedication of any portion of any or the Lots to the general public or for any public purposes whatsoever.

E. **Breach shall not Permit Termination.** No breach of this Declaration shall entitle any Owner of a Lot or other person to cancel, rescind or otherwise terminate this Declaration or avoid any of its obligations hereunder; but such limitation shall not otherwise affect any other rights or remedies which the non-breaching Owner may have to enforce the breaching Owner’s duties hereunder.

F. **Mortgagee Protection.** Except as otherwise expressly provided herein, this Declaration and the rights, privileges, obligations, restrictions and easements hereunder with respect to each Lot and the Property shall be superior and senior to any lien or encumbrance against any Lot, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach or default hereunder shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but each and all of the provisions hereof shall be binding upon and effective against any person (including mortgagees and deed of trust beneficiaries) who acquires title to any Lot or portion thereof or interest therein, whether by foreclosure, trustee’s sale, deed in lieu thereof, or otherwise, unless a provision of this Declaration specifically provides to the contrary.

G. **Interpretation.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah as applied to agreements among Utah residents, which are entered into and performed entirely within Utah. This Declaration has been reviewed by attorneys for each of the parties and no presumption shall be created

against the drafter of this Declaration. The Section headings in this Declaration are for reference purposes only and shall not be used in the interpretation hereof. The terms "includes" and "including" shall include, respectively, the term "without limitation".

H. Legal Fees. In the event of any litigation or arbitration to resolve any dispute hereunder, the substantially prevailing party in such litigation or arbitration shall be awarded, in addition to damages, injunction or other relief, reasonable legal fees and court costs as awarded by the court or arbitrator(s).

I. Severability. If any provision of this Declaration is held to be invalid or unenforceable to any extent, such provision shall be severed and the remainder of this Declaration shall be given full force and effect.

J. Waiver. No act or failure to act on the part of any person entitled to the benefits hereof shall constitute a waiver of that party's rights under this Declaration, except as may be specifically provided herein. Except as so provided, a waiver of a party's rights or remedies can only occur through a writing to such effect, signed by the party alleged to have waived the right or remedy. A waiver granted in connection with one instance or provision of this Declaration shall not be construed as a continuing waiver or a waiver in connection with another instance or another provision hereof.

K. Rights of Permittees. All Permittees on a Lot shall be bound by the provisions hereof; however, the terms of this Declaration may only be enforced by a Lot Owner and this Declaration shall not give rise to any rights of a Permittee (other than the Lot Owner) to consent or approve any modification hereof.

L. Notices. All notices and demands which are required or permitted to be given by an Owner on any other Owner hereunder shall be in writing and shall be sent by United States mail, postage prepaid, addressed to the Owner at the address for the mailing of property tax statements for the Owner's Lot which is shown in the records of the County Assessor's Office, or to such other place as an Owner may from time to time designate by written notice to the other Owners in accordance herewith. Notices shall be deemed delivered (1) on the date delivered evidenced by the courier's delivery records, if by courier delivery, (2) on the date delivered by U.S. Mail as evidenced by the return receipt, or (3) on the date acceptance of delivery is refused by the addressee. Provided notice is also sent by courier or U.S. Mail as aforesaid, it may also be delivered by facsimile, and delivery shall be deemed to have occurred on the date of transmission (unless the same is after 5:00 p.m. or on a non-business day, in which event delivery shall be on the next business day).

M. Exhibits. All exhibits, schedules, riders and plats attached to this Declaration are fully incorporated herein and made a part hereof.

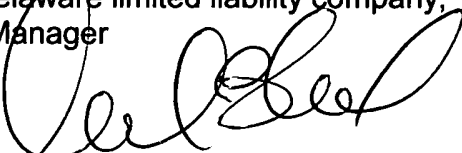
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IN WITNESS HEREOF, Declarant has executed this Declaration as of the date first written above, to be effective as of the date of recordation in the Real Property Records of Salt Lake County, Utah.

**DECLARANT:**

**FPA SANDY MALL ASSOCIATES, LLC,**  
a Delaware limited liability company

By: GF Sandy Mall, LLC,  
a Delaware limited liability company,  
its Manager

By:   
\_\_\_\_\_

Name: Michael B. Earl  
Title: Manager



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY AND EACH LOT**

Real property in the City of Sandy, County of Salt Lake, State of Utah, described as follows:

LOT ONE:

LOT 1, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT TWO:

LOT 2, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT THREE:

LOT 3, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT FOUR:

LOT 4, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT 5:

LOT 5, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT 6:

LOT 6, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT 7:

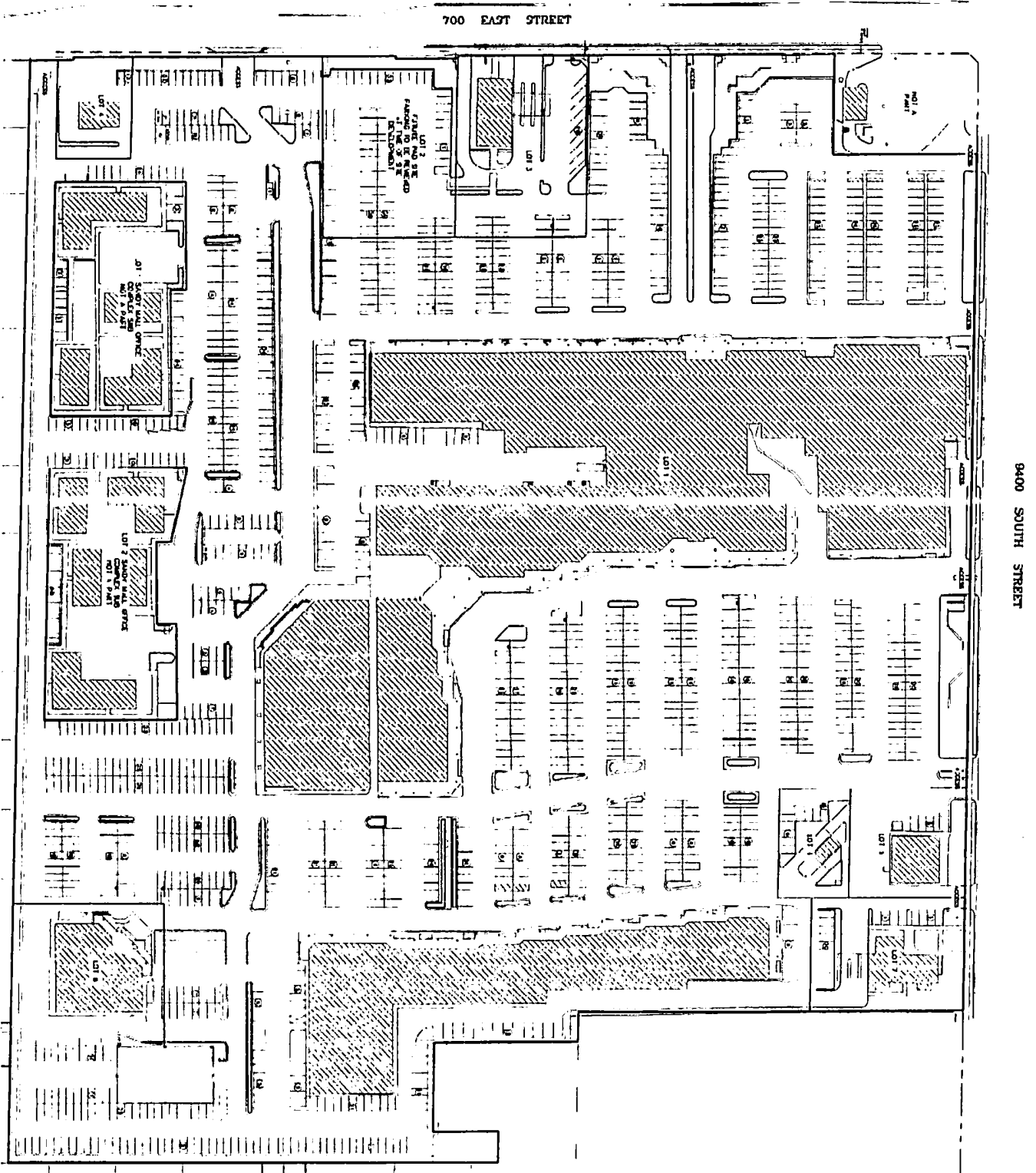
LOT 7, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

LOT 8:

LOT 8, ACCORDING TO THE SANDY MALL SUBDIVISION MAP, RECORDED ON MAY 23, 2016 AS ENTRY NO. 12284382, IN BOOK 2016, AT PAGE 113, OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH.

**EXHIBIT B**

**SITE PLAN OF PROPERTY**



## EXHIBIT C

### PROHIBITED AND RESTRICTED USES WITHIN THE PROPERTY

In addition to the other restrictions and provisions of this Declaration, no Owner or Occupant shall use or allow any use of all or any portion of the Property in violation of the following restrictions. Whenever the approval or consent of Declarant, and/or of a specific Lot Owner (and/or its specific Occupant), is provided for, Declarant and/or that Owner (and/or that specific Occupant) may grant or deny such consent in its sole and absolute discretion, whether or not the same is reasonable or unreasonable.

#### A. Common Area Use Restrictions.

1. Without the written consent of Declarant and the Owner of Lot 1, no Owner or other Occupant (other than as allowed on Lot 1 by the Owner and/or Occupant of Lot 1) shall use or allow any use of any portion of the Property for the operation of any secondhand store, or pinball, video game nor any form of entertainment arcade, gambling or betting office (other than for the sale of lottery tickets), massage parlor (excluding a day spa), cinema, video store or bookstore selling, renting or exhibiting material of primarily a pornographic or adult nature, adult entertainment bar or club, billiards parlor or pool hall, firearms shooting range or any other use which creates or causes unreasonable noise or odors, flea market, warehouse or car rental business, or a bowling alley, skating rink or movie theatre.

#### B. Exclusive Use Rights.

1. So long as that certain lease covering a portion of Lot 1 between Declarant and Dollar Tree, as well as any extensions or renewals thereof (the "**Dollar Tree Lease**") remains in effect, without the written consent of (i) the lessee under the Dollar Tree Lease, and (ii) the Owner of Lot 1, no Owner or other Occupant shall use any portion of the Shopping Center to operate any business for the sale of miscellaneous hard goods and other products typically sold in an Dollar Store operation and other discount and variety stores whose format includes more than 25% of its inventory in products that sell for \$2.00.

2. So long as that certain lease covering a portion of Lot 1 between Declarant and Red Balloon, as well as any extensions or renewals thereof (the "**Red Balloon Lease**") remains in effect, without the written consent of (i) the lessee under the Red Balloon Lease, and (ii) the Owner of Lot 1, no Owner or other Occupant shall use any portion of the Shopping Center to operate any business for which the primary business (50%) is the retail sale of educational and novelty toys (such as; Zany Brainy, Learning Express, Hammond's Toys, K-B Toys, Toys R Us).

3. So long as that certain lease covering a portion of Lot 1 between Declarant and South Valley Chiropractic, as well as any extensions or renewals thereof (the "**South Valley Chiropractic Lease**") remains in effect, without the written consent of (i) the lessee under the South Valley Chiropractic Lease, and (ii) the Owner of Lot 1, no Owner or other

Occupant shall use any portion of the Shopping Center to operate any business which the primary business is a chiropractor.

4. So long as that certain lease covering a portion of Lot 1 between Declarant and Jenny Craig, as well as any extensions or renewals thereof (the "**Jenny Craig Lease**") remains in effect, without the written consent of (i) the lessee under the Jenny Craig Lease, and (ii) the Owner of Lot 1, no Owner or other Occupant shall use any portion of the Shopping Center to operate any weight loss center. The foregoing restriction does not apply to spaces fronting S 700 E.

5. So long as that certain lease covering a portion of Lot 1 between Declarant and Subway, as well as any extensions or renewals thereof (the "**Subway Lease**") remains in effect, without the written consent of (i) the lessee under the Subway Lease, and (ii) the Owner of Lot 4, no Owner or other Occupant shall use any portion of the Shopping Center to operate any business which sells submarine or deli sandwiches.