

When recorded, please return to:  
David J. Castleton  
Blackburn & Stoll, LC  
77 West 200 South, Suite 400  
Salt Lake City, Utah 84101

E 135986 B 0584 P 0141  
Date 17-AUG-1999 16:42pm  
Fee: 27.00 Check  
CALLEN B. PESHELL, Recorder  
Filed By RGL  
For FIRST AMERICAN TITLE INS CO  
TOOELE COUNTY CORPORATION

FIRST AMERICAN TITLE  
AW # 492755

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration is made this 11 day of August, 1999, by PRICE TOOELE COMPANY, LLC, a Utah limited liability company ("Grantor").

**R E C I T A L S**

A. Grantor is the owner of a certain tract of land situated in Tooele County, Utah, more particularly described in Exhibit A attached hereto (the "Property").

B. Grantor is also the owner of that certain tract of land situated in Tooele County and adjacent to the Property, which is more particularly described in Exhibit B attached hereto (the "Retained Property").

C. Grantor intends to sell the Property subject to certain restrictions, conditions, covenants and agreements between Grantor and the purchasers of the Property and their successors and assigns.

NOW, THEREFORE, Grantor hereby declares that the Property shall be held, transferred, sold, conveyed, leased, subleased and occupied subject to the following restrictions, conditions, covenants and agreements:

1. Land Use. The Property shall be used for a retail shopping center (the "Shopping Center") in compliance with all zoning and land use ordinances and regulations of the municipalities and agencies governing the Property, and all construction, landscaping, grading and drainage of the Property shall be in accordance with the master plan as developed by the respective agency.
2. Construction of Improvements. The portion of the improvements constructed on the Property facing east shall be landscaped and have (a) appropriate set back (including no less than a 5 foot sidewalk and a 10 foot landscape barrier as a minimum set back and design requirement), (b) screens (6 foot architectural grade masonry walls) to all truck docks and truck delivery surface doors, delivery areas, trash compactors and containers, and parapet walls to screen all roof top mechanical equipment, (c) site lighting with light poles (not wall packs), and (d) a 6 foot (minimum) architectural grade masonry wall. No chain link fences or other types of fences, other than six foot architectural grade masonry walls, shall be allowed on the Property. All power lines shall be buried.

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27.00

3. Maintenance. From and after completion of construction of improvements on the Property, the eastern portion of the Property beginning with the east wall of the Shopping Center buildings and running east to the eastern boundary of the Property herein referred to as the "East Parcel"), shall be maintained in a first-class manner and condition and in accordance with standards generally applicable to first-class shopping centers in Tooele County, Utah, and in accordance with all applicable laws, governmental rules, regulations and requirements. Such maintenance shall include but not be limited to:
- a. Maintenance, repair and replacement of surface and subsurface parking lot and driveways.
  - b. Maintenance, care and replacement of all grass, shrubs and landscaping, including but not limited to, the fertilizing, watering, mowing and trimming thereof, and maintaining, repairing or replacing (when necessary) automatic sprinkler systems and water lines.
  - c. Removal of paper, debris, ice, snow and refuse and sweeping paved areas as required.
  - d. Maintenance, repair and replacement of such parking area entrance, exit and directional signs, markers and lights, and walk-in access points, as will be reasonably required from time to time, and such painting and repainting as may be required to maintain the parking area and equipment installed thereon in high quality condition.
  - e. Maintenance, repair and replacement of lighting facilities, architectural cinder block walls, fences, sewer lines and other utility lines and facilities and all other portions of the East Parcel in an attractive, serviceable and functional condition.
  - f. Trash receptacles shall be maintained in sufficient quantity to accommodate the trash and wastes generated by the Property, and shall be concealed from view from the Retained Property by means of architectural grade masonry block screening walls of material similar to and compatible with that of the buildings on the Property.
  - g. Fuel and other storage tanks shall be installed underground wherever practicable or screened from public view.
  - h. There shall be no exterior or overnight storage of pallets, boxes, cargo containers or semi-tractor trailers on the portion of the Property facing east, unless protected from view by architectural grade cinder block walls. Seasonal

case lot sale involving semi-tractor trailers, shall be allowed by a grocery store on the Property.

i. All exposed walls shall be painted or of an architectural grade.

4. Use Restrictions. In the event any portion of the East Parcel is subdivided or is not used for the Shopping Center (herein referred to as the "Surplus Land"), said Surplus Land shall be subject to the following restrictions:

a. Permitted Uses. The Surplus Land shall be used only for retail space, except as may otherwise be permitted in writing by Grantor (the permitted uses are referred to herein as "Permitted Uses"). The Surplus Land shall not be used as a mobile home park or for the parking or storage of mobile homes or trailer homes, nor shall it be used for mini storage, exterior storage or yard area.

b. Nuisance. No part of the Surplus Land shall be used for any purpose that is obnoxious, or that constitutes a public or private nuisance, or produces objectionable noise, excessive emission of fumes, odors, glare, light, dust or vibration. No part of the Surplus Land shall be used (i) as an automobile body shop, coin operated car wash (not part of a convenience store/gas station), or automotive repair facility; (ii) as a dance hall, amusement park, carnival, banquet facility, or other similar entertainment facility, or pool hall, or video game room, arcade or other amusement center; (iii) as a tavern, bar, disco or nightclub, or "adult" book store; (iv) for any manufacturing, light industrial or warehouse use; (v) as a funeral parlor, animal breeding or storage, pawn shop, flea market or swap meet, junk yard, cabinet shop; or (vi) for drilling for and/or removal of subsurface substances, dumping disposal, incineration or reduction of garbage or refuse.

5. Default; Remedies.

a. Default. In the case of any default hereunder, Grantor may give written notice of such default to the defaulting party (the "Defaulting Party"), itemizing the specific deficiencies (the "Deficiencies") in the Defaulting Party's performance. Defaulting Party shall have thirty (30) days after receipt of the notice in which to correct the Deficiencies or to commence actions reasonably necessary to correct the Deficiencies if said Deficiencies cannot be corrected in said thirty (30) day period, and thereafter, to proceed to diligently complete the correction of the Deficiencies, and the failure to timely correct the Deficiencies shall be a default hereunder.

b. Right to Cure. Upon default, the giving of any required notice, and the expiration of any required time period for cure, Grantor shall have the right to

cure the default of a Defaulting Party by paying or performing such obligation(s) in the stead of the Defaulting Party. In such event, then, in addition to any other right or remedy granted to Grantor herein or under applicable law, the Defaulting Party shall immediately upon demand (which shall include an itemized invoice of expenses incurred) pay to Grantor its reasonable costs incurred therein, including any reasonable attorney's fees or other professional fees incurred, together with interest from the dates such expenses were incurred at the rate of eighteen percent (18%) per annum, compounded monthly.

- c. Injunctive Relief. In the event of any violation or threatened violation by any person of any of the provisions contained in this Declaration, Grantor and its respective successors and assigns, shall have the right to enjoin such violation or threatened violation (including, as appropriate, a mandatory injunction) in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

6. General Provisions.

- a. Covenants Run With the Land. Each restriction and covenant hereof on the Property shall be a burden on the Property, shall be appurtenant to and for the benefit of the Retained Property, and each part thereof, and shall run with the land.
- b. Termination; Effect of Termination. This Declaration may be terminated by written agreement of the parties hereto and any lien holders affected thereby.
- c. Successors and Assigns. This Declaration and the restrictions and covenants contained herein shall inure to the benefit of Grantor, its successors and assigns, and shall be binding upon any person or entity acquiring the Property, or any portion thereof or any interest therein, whether by operation of law or otherwise. Any reference to Grantor herein shall mean to the then current owner(s) of the Retained Property. The new owner of any interest in the Property (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to its parcel during the period of its ownership. The foregoing shall not, however, restrict the right of any party, or successor hereto, to enforce this Declaration and obtain appropriate relief as against a subsequent owner to the extent that a continuing condition violates the terms hereof, regardless of whether that condition was created by a prior owner.
- d. Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall be determined invalid or unenforceable,

such determination shall not affect any other term or provision of this Declaration, or the application thereof to any other person or circumstance as to which it is not invalid or unenforceable.

- e. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person unless otherwise expressly provided herein.
- f. Waiver. The failure of Grantor to insist upon strict performance of any of the restrictions or covenants contained herein shall not be deemed a waiver of any rights or remedies that Grantor may have, and shall not be deemed a waiver of any subsequent breach or default in any of the restrictions or covenants by the same or any other person.
- g. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.
- h. Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.
- i. Notices. All notices to Grantor given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by U.S. mail or by U.S. mail express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of Tooele County:

Price Tooele Company, LLC  
35 Century Park-Way  
Salt Lake City, Utah 84115

All notices given pursuant to this Declaration shall be deemed given upon receipt. For purposes of this Declaration, "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified herein as shown on the return receipt; (ii) the date of actual receipt of the notice or other document by the person specified pursuant to this Section 6.j., or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on

the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by Grantor.

PRICE TOOELE COMPANY, LLC, a Utah limited liability company

By J. Steven Price  
J. Steven Price  
Its Manager

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

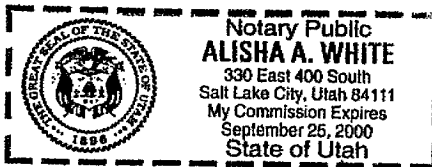
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of August, 1999, by J. STEVEN PRICE, as the Manager of Price Tooele Company, LLC, a Utah limited liability company.

Alisha A. White  
Notary Public  
Residing in Salt Lake

My Commission Expires:

9/25/00

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## EXHIBIT A

Real property located in Tooele County, Utah, more particularly described as follows:

2-4-15

Beginning at a point 33 feet South 00°15'56" East (deed South) and 555.29 feet South 89°43'06" West from the Northeast corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, to a point on the Southerly line of a County Road, said point also being the future center line of First East Street; thence South 89°43'06" West 122.71 feet, along the South line of said County Road to the Northeast corner of that property conveyed to Albert R. Arellano by that certain Real Estate Contract recorded April 15, 1987 as Entry No. 008249 in Book 254 at page 36 to 40 of Official Records; thence South 00°15'56" East 218 feet (deed South 218 feet more or less), along the East line of said Arellano property to its Southeast corner; thence South 89°43'06" West 200 feet (deed West 200 feet more or less), along the South line of said Arellano property to its Southwest corner; thence North 00°15'56" West 218 feet (deed North 218 feet more or less), along the West line of said Arellano property to its Northwest corner, said point also being on the South line of said County Road; thence South 89°43'06" West 128.50 feet (deed West 161.5 feet more or less), along the South line of said County Road to the Northeast corner of the property conveyed to H.E.B. Auto Supply, Inc. by deed recorded July 13, 1992 as Entry No. 018738 in Book 334 at page 417 of Official Records; thence South 00°15'56" East 330 feet (deed South 330 feet more or less), along the East line of said H.E.B. property and the East line of the property conveyed to Mantes Realty Co. by deed recorded March 23, 1971 as Entry No. 293080 in Book 101 at page 440 of Official Records, to the Southeast corner of said Mantes Realty property; thence South 89°43'06" West 288.48 feet (West 229 feet more or less) to the Southwest corner of said Mantes Realty property, said point also being on the East line of State Highway; thence South 01°23'48" West 678.21 feet (deed South 685.99 feet more or less), along the East line of said State Highway to the Northwest corner of that property conveyed to Triple M Food & Fuel, Inc. by Deed recorded April 17, 1991 as Entry No. 040274 in Book 315 at page 301 of Official Records; thence North 89°38' East 275.16 feet along the North line of said Triple M property, thence South 00°15'56" East 281 feet (deed South 281 feet more or less), along the East line of said Triple M property and that property conveyed to Glenn G. Oscarson, etux by deed recorded December 6, 1989 as Entry No. 030879 in Book 296 at page 767 of Official Records, to the Southeast corner of said Oscarson property; thence South 89°38' West 20 feet (deed West 20 feet more or less), along the South line of said Oscarson property to the Northeast corner of that property conveyed to Bruce T. Steadman, etal by deed recorded December 6, 1989 as Entry No. 030882 in Book 296 at page 774 of Official Records; thence South 00°15'56" East 200 feet (deed South 200 feet more or less), along the East line of said Steadman property to its Southeast corner, said point also being on the North line of that property conveyed to Sandra K. Aquirre by deed recorded May 14, 1990 as Entry

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No. 034153 in Book 303 at page 61 of Official Records; thence North 89°38" East 46.84 feet along the North line of said property to the Northeast Corner, said point also being on the West line of the property conveyed to Jerome H. Pearlman and Faith Pearlman, Trustees of the Jerome H. Pearlman and Faith Pearlman Trust No. II recorded September 13, 1991 as Entry No. 043221 in Book 321 at page 569 to 570 of Official Records, thence North 01°03'32" East 4.51 feet to the Northeast corner of the said Pearlman property, thence South 89°59'34" East 437.30 feet along the North line of said Pearlman property to the extended line of First East Street, thence North 0°30'17" East 1486.31 feet along the future center line of said First East Street to the point of beginning.

\* \* \*



## EXHIBIT B

Real property located in Tooele County, Utah, more particularly described as follows:

Beginning at a point 33 feet South 00°15'56" East (deed South) from the Northeast corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, to a point on the Southerly line of a County Road; thence South 89°43'06" West 555.29 feet, along the South line of said County Road, thence South 0°30'17" West 1486.31 feet, thence North 89°59'34" West 29.56 feet, thence South 01°03'00" West 244.57 feet, thence South 88°57'00" East 63.69 feet, thence North 0°47'04" East 76.05 feet, thence South 89°12'56" East 545.47 feet to the East line of said Section 21, thence North 0°15'56" West 1666.12 feet to the point of beginning. Contains 21.8246 acres.

*2-4-12*