

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND  
GRANT OF EASEMENTS FOR BOTANICAL POINT**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR BOTANICAL POINT (the "**Declaration**") is made as of the 13th day of April, 2016 by RENDEZVOUS MOUNTAIN HOLDINGS, LLC, a Delaware limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of those certain parcels of real property located in the City of Lehi, Utah County, Utah, more particularly described on attached Exhibit A-1 and depicted on Exhibit A-2 (the "**Real Property**"), upon which Declarant intends to develop an integrated, mixed-use project that may include office, retail, light manufacturing and multifamily residential uses (the "**Project**").

B. Declarant plans to develop and plan for the development of the Project for the mutual benefit of all real property within the Project and, for such purposes, hereby fixes and establishes the easements, covenants, conditions, and restrictions set forth in this Declaration, upon and subject to which all of the Project, or any part thereof, shall be improved, held, used, occupied, leased, sold, and/or conveyed. It is the intent of Declarant in 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 of the Parcels and shall apply to and bind the respective owners, tenants, occupants, and 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 on every interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels (except to the extent otherwise stated herein) and constitute covenants running with the land pursuant to applicable Utah law.

## ARTICLE 1

DEFINITIONS

1.1 “**ACC**” means the Architectural Control Committee that may be established by the Management Committee pursuant to this Declaration for the purposes of reviewing plans and specifications for the construction or modification of improvements and administering and enforcing any Design Guidelines approved by the Management Committee. Declarant shall have the right at all times during the Declarant Control Period to appoint the architect for the Project as a member of the ACC.

1.2 “**Assessments**” means any of the following: Regular Assessments, Special Assessments, and Capital Improvements Assessments.

1.3 “**Assessment Lien**” means that lien created by reason of the delinquency described in and upon recordation of a Notice of Assessment Lien.

1.4 “**Building**” means any enclosed structure (excluding parking structures and parking facilities) 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.

1.5 “**Building Area**” means the limited areas of the Project within which any Building or Buildings may be constructed, placed or located.

1.6 “**Capital Improvement Assessments**” means the assessments levied by the Management Committee in accordance with Article 8 of this Declaration for the costs and expenses incurred by Declarant and/or the Management Committee set forth in Section 8.5 of this Declaration.

1.7 “**Class A Office Space**” means one or more prestigious office buildings that compete (or, if not owner occupied, would compete) for premier office users, command (or, if not owner occupied, would command) above-average rents for the greater Utah County market, and include the following attributes: high quality, image-defining architectural design and detailing; best-in-class construction, infrastructure, finishes, materials, hardware, and amenities; state of the art building systems and technology capabilities; a definite market presence; and professional marketing and management (unless the buildings are owner occupied and are self-managed).

1.8 “**Common Area**” means all areas designated in Exhibit A-2 attached hereto as “Common Areas”, which are or may be made available for the general use, convenience, and benefit of all “**Permittees**” (as hereinafter defined) of a particular Parcel (or Parcels) and/or of the public.

1.9 “**Common Expenses**” means the actual and estimated costs incurred by the Declarant and/or the Management Committee in the administration, maintenance, repair, operation, and management of the Common Area, including, without limitation, the following: fees for the management of the Common Area, which shall not exceed ten percent (10%) of the

Common Expenses; unpaid Assessments; utility, landscaping, and other maintenance costs of the Common Area; the cost of any types and amounts of insurance covering the Common Area as are determined by the Management Committee in its commercially reasonable discretion; the costs of bonding the Management Committee Members, members of the ACC, and any Manager engaged by Declarant; the reasonable and customary out of pocket costs incurred by the ACC or any other committees formed by the Management Committee in performing their duties herein; all other reasonable and customary out of pocket costs incurred by Declarant or the Management Committee for any reason whatsoever in connection with the Common Area, except for capital costs that are to be paid in the form of a Capital Improvement Assessment; and any other reasonable and customary out of pocket costs incurred in connection with Declarant and/or the Management Committee's performance of any other obligation or covenant under this Declaration or the Management Committee Rules.

1.10 “**Construction Guidelines**” has the meaning set forth in Section 3.1 of this Declaration.

1.11 “**Declarant**” means the Declarant identified in the first paragraph of the first page hereof or any Person or entity to whom Declarant's rights hereunder are specifically assigned by recorded instrument. Unless so specifically assigned, no other Person shall be entitled to exercise the rights reserved to the Declarant hereunder; provided, however, that the Declarant may assign, convey, pledge, encumber or hypothecate its rights hereunder to an institutional lender as security for the performance of any legal obligation, and if such lender thereafter succeeds to Declarant's rights by foreclosure or any other legal remedy or conveyance in lieu thereof, such lender shall be entitled to all of the rights of the Declarant hereunder, provided that any such successor shall be bound by all of the terms of this Declaration as it relates to the rights of all parties now or hereafter affected hereby.

1.12 “**Declarant Control Period**” means that period of time from and after the establishment of this Declaration until Declarant is no longer an Owner of any Parcel subject to this Declaration. Upon the expiration of the Declarant Control Period, all rights and obligations of Declarant under this Declaration shall be transferred to and assumed by the Management Committee.

1.13 “**Declaration**” means this Declaration of Covenants, Conditions and Restrictions and Grant of Easements, as identified in the first paragraph of the first page hereof.

1.14 “**Default Rate**” means 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 Wells Fargo Bank, N.A., or if Wells Fargo Bank ceases to exist, the then largest nationally chartered bank in Utah in terms of deposits) from time to time plus two percentage (2%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.15 “**Design Guidelines**” means the guidelines and design criteria set forth in attached Exhibit C that are intended to protect the Project's aesthetic qualities and ensure design excellence for the Project as an integrated, mixed-use development with Class-A Office Space, retail, multifamily residential and light industrial uses.

1.16 “*Force majeure*” means any delay caused by any occurrence not occasioned by the conduct of any party subject to this Declaration, whether that occurrence is an act of God or public enemy, or whether the occurrence is caused by war, riot, storm and weather conditions which are abnormal for the period of time and could not have been reasonably anticipated, earthquake, other natural forces, moratoriums, unavailability of material or labor, or by acts of anyone not Party to or subject to this Declaration.

1.17 “*Governmental Restrictions*” means 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.

1.18 “*Management Committee*” means the three (3) or five (5) Person committee established under this Declaration that shall administer and enforce the covenants, conditions, and restrictions hereof and shall exercise the rights, powers, and duties set forth in this Declaration.

1.19 “*Management Committee Member*” means a Person selected to serve on the Management Committee in accordance with the terms of this Declaration.

1.20 “*Management Committee Rules*” has the meaning set forth in Section 6.4 of this Declaration.

1.21 “*Manager*” means a Person so designated by the Management Committee (or Declarant during the Declarant Control Period) to perform the obligations of “Manager” under this Declaration. At any time during the Declarant Control Period under this Declaration, Declarant shall have the right, without the consent of any Owner, to: (i) assume any or all of the rights and obligations of “Manager” under this Declaration, and/or (ii) assign any or all of its rights as “Declarant” under this Declaration to Manager.

1.22 “*Mortgage*” means a deed of trust or an indenture of mortgage on a Parcel 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).

1.23 “*Mortgagee*” means any lender or mortgagee under a Mortgage 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 at all times be and remain subordinate to this Declaration.

1.24 “*Notice of Assessment Lien*” means a notice recorded in the office of the County Recorder, Utah County, Utah, and such other place as may be required by law, by Declarant, the Management Committee or any other Person to whom is owed any assessment or other sum of money payable by any Owner 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.

1.25 **“Owner”** means each Person, who, at any given time, holds fee title to any full Parcel, or a ground lessee of any full Parcel under a ground lease with a minimum initial term of twenty (20) years (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the office of the County Recorder, Utah County, Utah). An Owner shall not include tenants and sublessees of less than an entire Parcel. In the event, at any time, that an interest in the same Parcel 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, 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 office of the County Recorder, Utah County, Utah. 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.

1.26 **“Parcel”** or **“Parcels”** means those several parcels of Real Property which together comprise the Project, and such further subdivision of any such Parcel as may be approved by Declarant. For purposes of this Declaration, the land area of each Parcel includes one-half of the width of any dedicated public road located adjacent to such Parcel.

1.27 **“Parcel 3”** means that certain Parcel initially sold to Parcel 3 Owner, which is more particularly described in attached Exhibit B.

1.28 **“Parcel 3 Owner”** means Young Living Essential Oils, LC, a Utah limited liability company, and any subsidiary entity thereof formed to own Parcel 3, and its or their successors and/or assigns as the fee simple owner(s) of Parcel 3.

1.29 **“Parties”** means the Owners and Declarant.

1.30 **“Permittees”** means 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.

1.31 **“Person”** means any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.32 **“Prohibited Uses”** means any use or operation which is inconsistent with the development or operation of the Project as a first class retail, commercial, entertainment, multi-family residential, office, and/or community project, as so operated, as reasonably determined from time to time by Declarant. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce, are accompanied by or involve the following characteristics, which list is not intended to be all-inclusive:

- a. Any use that constitutes a public or private nuisance;

b. Any use that produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness;

c. Any use that produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to first class retail operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;

d. Any use that produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);

e. Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction shall not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Project;

f. Any electrical substations or high-voltage power transmission lines;

g. Any manufacturing, processing, assembly, or packaging uses or heavy industrial uses, including, without limitation, distillation (except as set forth below with respect to Parcel 3), refining, smelting, or mining operations; gasoline or oil storage facilities; recycling centers or collection stations; any operation involving dumping, disposal, incineration or reduction of garbage or refuse; rock, sand or gravel distribution or storage facilities; truck freight terminals; truck or large equipment sales, rental or repair facilities; and commercial laundry or dry cleaning plants; provided, however, that the Parcel 3 Owner shall have the right to perform limited distillation operations in connection with and incidental to its research and development activities within the laboratory areas of the building(s) constructed on Parcel 3, and, in connection with the foregoing, may operate a functional distiller for demonstration and educational purposes only (and only for guests of the Parcel 3 Owner);

h. Any junk yards or salvage yards, or towing or impound yards;

i. Any agricultural uses, except that, subject to any restrictions or limitations imposed under the City of Lehi's laws, rules and regulations, the Parcel 3 Owner may (1) utilize up to fourteen (14) acres of Parcel 3 for limited horticultural uses consistent with and incidental to the business operations of the Parcel 3 Owner (such as lavender crops), until such time as the Parcel 3 Owner constructs an anticipated second office tower upon Parcel 3, so long as such area is appropriately landscaped and maintained as part of an integrated master landscape for Parcel 3, and (2) operate a "demonstration" garden area consistent with and incidental to the business operations of the Parcel 3 Owner upon up to five (5) acres of Parcel 3 on an ongoing basis, so long as such area is appropriately landscaped and maintained as part of an integrated master landscape plan for Parcel 3;

j. Any construction and equipment sales and/or rental facilities;

k. Any outside storage of materials, products or equipment (unless approved by Declarant);

l. Any manufactured home sales or services; mobile home or trailer court, mortuary, lot for the sale of new or used vehicles;

m. Any pawn shops, check cashing, title loan or similar credit services facilities;

n. Any operation for drilling for and/or removal of subsurface substances;

o. Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions;

p. Any car washes, automobile service or repair shops or operations; and

q. Any off-track betting facility.

1.33 “**Project Infrastructure**” means certain infrastructure improvements, utility connections, roads and associated “off-site” and/or “horizontal” improvements constructed and installed by Declarant to provide mutual benefit to and will serve all of the Parcels within the Project, which are more particularly described in Exhibit D attached hereto. For purposes of this Declaration, “Project Infrastructure” excludes any improvements that are intended to exclusively benefit one or more Parcels whether or not such improvements are located on any such Parcel or Parcels or are located elsewhere within the Project.

1.34 “**Project Infrastructure Costs**” means the total cost and expense incurred by Declarant to design, construct, and install the Project Infrastructure. For purposes of this Declaration, Project Improvement Costs excludes costs, if any, incurred by Declarant or the Management Committee for the ongoing maintenance, repair, or replacement of the Project Infrastructure.

1.35 “**Project Signage**” has the meaning set forth in Section 4.1 of this Declaration.

1.36 “**Project Square Footage**” means the total square foot of all land comprising the Project, which is 3,285,298.

1.37 “**Proportionate Share**” means the ratio of the square footage of a Parcel to the Project Square Footage.

1.38 “**Proportionate Share of Project Infrastructure Costs**” has the meaning set forth in Section 5.1 of this Declaration.

1.39 “**Regular Assessments**” means the assessments for Common Expenses levied by the Management Committee in accordance with Article 8 of this Declaration.

1.40 “*Rendezvous Mountain Holdings*” means Rendezvous Mountain Holdings, LLC, a Delaware limited liability company.

1.41 “*Sign Program*” has the meaning set forth in Section 4.1 of this Declaration.

1.42 “*Special Assessments*” means the assessments levied by the Management Committee in accordance with Article 8 of this Declaration for the costs and expenses incurred by Declarant and/or the Management Committee set forth in Section 8.4 of this Declaration.

1.43 “*Subdivision Plans*” means the engineered and preliminary drawings and specifications that identify the location and design of the Project Infrastructure that will serve the Project, which Declarant and the Parcel 3 Owner have approved prior to the date hereof.

## ARTICLE 2

### USE IN GENERAL

2.1 Intent. It is the intent of Declarant to develop the project as a first class retail, commercial, entertainment, multi-family residential, office, and/or community project.

2.2 Lawful Use. Except as otherwise limited pursuant to this Declaration, the Project may be used for any lawful retail, commercial, Class-A office, light industrial, residential, cultural and/or community purpose not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use. Declarant hereby agrees and declares that the use of Parcel 3 as Class A Office Space, a museum and customer welcome center, directly related to the operation of Parcel 3 Owner’s business, shall be and hereby is approved by Declarant, and shall in no event be deemed to constitute a “Prohibited Use.”

2.3 Zoning. This Declaration shall be subject to applicable zoning laws.

2.4 Name of Project. Declarant hereby declares that the name of the Project shall be “Botanical Point,” unless otherwise approved by the Parcel 3 Owner, which approval may not be unreasonably withheld.

## ARTICLE 3

### CONSTRUCTION

3.1 Initial Building Approval for Parcels. No Owner shall commence or permit the commencement of construction of any sign, Building or other structure within the Project unless the ACC determines in advance that the architectural and landscape design, exterior finishes, materials, and other attributes thereof are consistent with the Design Guidelines and with first class retail, commercial, entertainment, multi-family residential, office, and/or community uses, which determination shall be in the form of approval of such Owner’s detailed plans and specifications for such improvements. Such approval shall be given or withheld in



writing within thirty (30) days after receipt of written request and receipt by the ACC of detailed plans and specifications therefor. All improvements shall be constructed in strict accordance with any such plans and specifications approved by the ACC. Notwithstanding anything in this Declaration to the contrary, and without limitation, it shall be reasonable for the ACC to withhold such approval if such improvements are inconsistent with the Design Guidelines or this Declaration. No Owner shall make any material alterations to any of the foregoing matters without first obtaining a similar approval from the ACC as to such alteration. Notwithstanding anything to the contrary contained herein, the ACC shall have the right to establish standardized construction guidelines for the Project ("**Construction Guidelines**"), which such Construction Guidelines may, as reasonably determined by the ACC, include general construction rules and requirements. The ACC shall have the right to change the Construction Guidelines from time to time, in the ACC's sole but reasonable discretion. Any and all construction or other work performed by an Owner pursuant to this Declaration shall be subject to and performed in accordance with the Construction Guidelines.

3.2 Alteration Approval. In order to maintain the architectural and functional harmony of the Project, 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 functional purpose of such item, unless the ACC determines in advance that such alteration is consistent with the Design Guidelines and this Declaration and such alteration is made in accordance with any Construction Guidelines. Such approval shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by the ACC of detailed plans and specifications therefor. Failure to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute disapproval of such construction, reconstruction or alteration. All alterations or improvements shall be constructed in strict accordance with the plans and specifications approved by the ACC, the Construction Guidelines (if applicable), and the Design Guidelines. No material deviation shall be made from such plans and specifications without the ACC's prior written approval.

### 3.3 Construction Procedures.

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 part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or 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 or permitted activity 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 the ACC, in its reasonable discretion, or located in a permitted staging or storage area identified in the Construction Guidelines. If substantial work is to be performed, such Owner, at the request of the ACC or any other Owner of a Parcel that 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. Each Owner shall diligently complete all construction activities within its Parcel as quickly 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.

e. 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.

3.4 Specific Requirements for Parcel 3. Declarant acknowledges that (a) Parcel 3 Owner has previously provided to Declarant for review conceptual renderings of proposed building improvements Parcel 3 Owner currently contemplates constructing upon Parcel 3 (the "**Parcel 3 Renderings**"), (b) Declarant has approved such Parcel 3 Renderings on behalf of the ACC, and (c) the design and construction of improvements upon Parcel 3 are exempt from the requirements set forth in Sections 3.1 and 3.2 of this Declaration so long as the Parcel 3 Owner complies with the following requirements:

(i) At least thirty (30) days prior to Parcel 3 Owner's anticipated commencement of construction, Parcel 3 Owner shall deliver its proposed final plans (the "**Parcel 3 Plans**") to Declarant for Declarant's review. In the event Declarant reasonably determines that the Parcel 3 Plans "vary substantially and negatively from the Parcel 3 Renderings", then Declarant shall notify Parcel 3 Owner of such determination within ten (10) business days following Declarant's receipt of such Parcel 3 Plans. In the event Parcel 3 Owner (A) agrees with Declarant's determination, Parcel 3 Owner shall be required to comply with the design review procedures set forth in Sections 3.1 and 3.2 above, except that the Parcel 3 Design Guidelines, as set forth in Exhibit C-2, shall apply to the plans and specifications for Parcel 3, or (B) disagrees with Declarant's determination in Parcel 3 Owner's reasonable discretion, then

Parcel 3 Owner shall notify Declarant in writing within ten (10) business days following Parcel 3 Owner's receipt of Declarant's notice, in which event such dispute over the Parcel 3 Plans shall be resolved pursuant to Article 10 below and no construction shall commence on Parcel 3 until such dispute is resolved.

(ii) With respect to Parcel 3, any development thereon shall include a minimum of One Hundred Fifty Thousand (150,000) square feet of Class A Office Space, unless otherwise approved by Declarant, which approval shall not be unreasonably withheld, conditioned, or delayed.

For purposes of this Section 3.4, plans that "vary substantially and negatively from the Parcel 3 Renderings" means plans for which the massing, scale, size, exterior materials, or other similar major elements relating to the improvements to be constructed upon Parcel 3 result in a material and substantial variation from the Parcel 3 Renderings and from the other rights granted to Parcel 3 with respect to this Declaration, with such variation reasonably likely to result in a material, negative effect upon the marketing, sale or development of the remaining lots within the Project.

## ARTICLE 4

### PROJECT EASEMENTS

4.1 Reservation of Easements. Declarant hereby establishes and reserves for itself and its successors, assigns and designees, non-exclusive perpetual rights and easements over, across, upon and beneath the Common Area for the following purposes:

a. The installation, maintenance, repair, replacement and reconstruction of identification signage for the Project that may consist of sign pylons and/or monument signs (the "**Project Signage**"). The costs of designing, constructing, maintaining, repairing, replacing or reconstructing the Project Signage shall be paid for pro rata by the Owners or occupants of the Buildings whose names or logos appear on such signs in the ratio of their square footage usage of such sign pylons. Participation on such signage shall be as determined by Declarant, in Declarant's sole and absolute discretion, or as set forth in the "**Sign Program**" (as hereinafter defined), if any, implemented pursuant to the following provisions of this Section; provided, however, that notwithstanding the foregoing, if Declarant constructs Project Signage within portions of the Common Areas of the Project to identify the businesses operating within the Project, each of the Owners shall be offered space on such signage in a manner which is equitable and fair to the Owners, as reasonably determined by Declarant. No changes shall be made to such signage, including the locations of same, without the prior written approval of Declarant. Notwithstanding anything to the contrary contained in this Declaration or elsewhere, Declarant shall have the right, in Declarant's sole discretion (using prudent business judgment) to install, erect and/or construct signage, including tenant, directional and informational signage, at locations reasonably designated by Declarant within and on any of the Parcels, provided that such signage shall be permitted upon Parcel 3 only in such areas as are designated (if any) on Exhibit B-1. Notwithstanding anything to the contrary contained herein, Declarant may establish a sign program for the Project ("**Sign Program**"), which such Sign Program may, as determined by Declarant, include, among other things, detailed design, engineering and specification

requirements relating to signage and may be administered by the Management Committee or the ACC, in Declarant's sole discretion; provided, however, that Parcel 3 shall be exempt from such Sign Program unless otherwise agreed by Parcel 3 Owner. Declarant shall have the right to change the Sign Program from time to time, in Declarant's sole and absolute but good faith discretion. Any and all signage installed at the Project shall be subject to and erected in accordance with the Sign Program.

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, if and as applicable.

c. The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, pipes, gutters and lines, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, 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 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. The original location of the facilities set forth above shall be subject to the approval of the Declarant. 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, each 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 the Declarant.

d. Pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses and occupants located or to be located within the Project, if and as applicable.

e. The construction, replacement and reconstruction of flag poles, curbs, directional and other signs, gutters, traffic islands, pedestrian walkway or landscaped areas, including planters, planting boxes, edgers, fountains, valves, and amenities, such as benches for the benefit of Permittees; provided, however, that the Declarant shall first approve of all such facilities and that such facilities do not materially affect the access, visibility or parking of the property or Building of any Owner.

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

g. Recycling centers for cans, bottles or other materials, if and as applicable.

h. Trash, refuse and garbage container storage areas if indicated as Common Area.

4.2 Common Area Alteration. No Owner or other Person shall alter any Common Area or improvement located thereon, without the prior written consent of the Management Committee. Notwithstanding the foregoing: (i) an Owner (or the Management Committee 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, so long as such excavation or construction activities shall be prosecuted diligently to completion; and further provided that the consent of the Owner on whose Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld. 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) Declarant may make alterations in the Common Area as it shall deem appropriate or necessary. Any work performed in the Project pursuant to this Section shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project.

4.3 Encroachment Easement. Should any Building or improvement constructed within the Project inadvertently encroach on any adjacent property and said encroachment does not exceed twenty-four (24) inches and/or otherwise materially, adversely affect the use of the property being encroached upon, the Owner of the adjacent property shall be deemed to have granted an easement effective as of the recording date hereof for such encroachment for so long as such encroachment shall exist, and shall execute such instruments as may reasonably be required by the encroaching party, or its assignees, title insurer or Mortgagees confirming such easement.

## ARTICLE 5

### INITIAL PROJECT IMPROVEMENTS

5.1 Project Infrastructure Costs. Each initial Owner of a Parcel shall be responsible for, and shall pay to Declarant when due, its proportionate share of the Project Infrastructure Costs. Each such Owner's proportionate share of the Project Infrastructure Costs shall be based on the total square footage of such Owner's Parcel in relation to the Project Square Footage (the "***Proportionate Share of Project Infrastructure Costs***") and shall be due and payable at the time of conveyance of such Parcel by Declarant to each such Owner (except as otherwise provided in this Declaration or in a separate agreement between Declarant and such Owner). If the Project Infrastructure Costs are not yet known at the time of conveyance, and unless otherwise agreed by Declarant and such Owner, Declarant may separately provide a Notice of Assessment Lien to such Owner setting forth its Proportionate Share of the Project Infrastructure Costs when such costs are determined, which shall be due and payable to Declarant in accordance with the provisions of Article 7 of this Declaration. Once an Owner has paid in full its Proportionate Share of Project Infrastructure Costs, Owner and Declarant shall record against such Owner's Parcel a notice confirming such payment and satisfaction of such Owner's obligations hereunder, which notice also shall state that no other amounts are due or

owing from such Owner or any future Owner of such Parcel to Declarant pursuant to this Section 5.1.

## ARTICLE 6

### MANAGEMENT COMMITTEE

6.1 Formation of the Management Committee. The Management Committee shall be charged with the duties and invested with the powers set forth in this Declaration. During the Declarant Control Period, the Management Committee shall be composed of three (3) Management Committee Members, two (2) designated by Declarant and one (1) designated by the Parcel 3 Owner. Upon the expiration of the Declarant Control Period and annually thereafter, the Management Committee shall consist of five (5) Management Committee Members who shall be elected at large by the Owners in accordance with the provisions of Section 6.2 of this Declaration. The Management Committee may also appoint various subcommittees, including, without limitation, the ACC, and may appoint a Manager who shall, subject to the direction of the Management Committee, be responsible for the day-to-day responsibilities of the Management Committee set forth in this Declaration. Any decision of the Management Committee requires a majority vote of the Management Committee Members, with each Management Committee Member having one (1) vote.

6.2 Election of the Management Committee; Voting. Each Owner shall have one (1) vote for each square foot of surface land area that such Owner owns within the Project. Fractional votes shall be allowed. Each Owner shall be entitled to vote for up to five (5) candidates to serve on the Management Committee at each annual election of the Management Committee. The Management Committee Members shall be determined by the largest number of such Owner votes cast. Each Management Committee Member shall serve a three (3) year term. If any Management Committee Member resigns or otherwise fails to complete his or her term, the remaining Management Committee Members shall appoint an interim Management Committee Member who shall serve until the next scheduled election of the Management Committee. If the Management Committee Members cannot reach agreement on the selection of an interim Management Committee Member, the Management Committee may hold a special election of the Owners to elect an interim Management Committee Member. The Management Committee shall hold annual elections for the Management Committee and may establish additional rules and procedures governing the election process in accordance with this Declaration.

6.3 Transfer of Ownership. The rights and obligations of the Owners shall not be assigned, transferred, pledged, conveyed or alienated in any way, including by any proxy, except upon the conveyance and transfer ownership of the fee title to such Owner's Parcel, and then only to the transferee of fee record ownership of such real property. Any such transfer of ownership shall operate to transfer the Owner's rights and obligations appurtenant to such Parcel to the purchaser thereof.

6.4 Powers of the Management Committee. The Management Committee may exercise the powers for the governance and operation of the Project set forth in this Declaration. Specifically, the Management Committee may, among other things: (a) subject to Section 7.2 below, adopt and amend rules, regulations, and restrictions (the “**Management Committee Rules**”); (b) with input from Declarant, adopt and amend budgets for revenues, expenditures and reserves; (c) collect Assessments for and on behalf of Declarant; (d) oversee a Manager and other independent contractors engaged by Declarant; (e) regulate the use of the Common Area; (f) impose charges for late payment of Assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon Owners for violations of this Declaration and any Management Committee Rules; and (g) impose reasonable charges for the preparation and recordation of amendments to this Declaration or Notices of Unpaid Assessments.

6.5 Powers of Declarant. During the Declarant Control Period, in addition to the other rights of Declarant set forth in this Declaration, Declarant shall have the right and power to (a) foreclose and otherwise enforce Liens; (b) engage a Manager, who shall report to the Management Committee, and other independent contractors; (c) institute, defend or intervene in litigation or administrative proceedings arising under this Declaration; (d) undertake and complete the repair, insurance, replacement and modification of the Common Area, at the cost and expense of the Owners; (e) obtain and maintain liability and other insurance policies that are considered necessary or appropriate by Declarant, in its reasonable discretion, for the Management Committee and the Management Committee Members, at the cost and expense of the Owners; and (f) cause additional reasonable improvements consistent with other first class commercial real estate development projects in Utah County, similar in nature and size to the Project to be made as a part of the Common Area, at the cost and expense of the Owners.

6.6 Indemnification. All Management Committee Members shall be indemnified by the Owners against all expenses and liabilities, including attorneys’ fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of their being or having been a Management Committee Member, or any settlement thereof, whether or not they are Management Committee Members at the time such expenses are incurred, provided that the Management Committee shall determine, in good faith, that such Management Committee Member did not act, fail to act or refuse to deliberately act in bad faith or with gross negligence, fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Management Committee Members may be entitled, but shall not apply to the extent such liability, damage or injury is covered by insurance of any type.

## ARTICLE 7

OPERATION AND MAINTENANCE  
OF BUILDING AREA AND COMMON AREA

7.1 Building and Improvement Maintenance. Except as may otherwise be provided pursuant to other matters of record affecting the Project (or portions thereof), each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenable condition, all Buildings and other improvements located upon its Parcel or Parcels, including screening from view the garbage receptacle areas.

7.2 Rules and Regulations. As further provided in Section 6.4 above, the Management Committee may promulgate Management Committee Rules which shall be reasonable and of general application, and shall relate to the supervision, control and use of the Common Area, in which event, it shall make and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly.

7.3 Maintenance of Common Area. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, Declarant is responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Common Area, all at the Owners' cost and expense. Such obligations may include (but shall not be limited to) the following (to the extent such improvements are located within the Common Area):

- a. Resurfacing of walks, if any;
- b. Cleaning, sweeping, snow and debris removal, painting, disposal of rubbish and debris, and all other tasks necessary to maintain the Common Area in a clean, safe and orderly condition;
- c. Maintenance of all curbs, gutters, landscape enclosures, fences and retaining walls, if any, in good condition and repair;
- d. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;
- e. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered; and
- f. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the Common Area that is not the responsibility of the utility company or the responsibility of an Owner or another party pursuant to applicable matters of record.



## ARTICLE 8

ASSESSMENT LIEN

8.1 Assessments. Each Owner, by acceptance of a deed or other conveyance of an interest in any Parcel or portion thereof, is deemed to covenant and agree to pay to Declarant each of the following amounts: Regular Assessments, Special Assessments and Capital Improvement Assessments, which the Management Committee shall impose and collect from time to time, as provided in this Declaration based on such Owner's Proportionate Share. The Assessments, together with Default Interest, late charges, attorneys' fees and court costs and other costs of collection thereof, as hereinafter provided, shall be and constitute a Lien against any Parcel against which the Management Committee or Declarant may record a Notice of Assessment Lien related to any such Assessment(s). In addition to such Lien, each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall pass to an Owner's successor in title, and the Lien shall remain effective and of record in the event such Owner should transfer or convey title thereto to any other party.

8.2 Purpose of Assessments. The Assessments levied by the Management Committee shall be used by Declarant to maintain the Common Area and to pay the costs of administration of the Management Committee and all other Common Expenses, as defined herein, and/or to otherwise further the interests of the Management Committee set forth in this Declaration. Where a Parcel has separate gas, electrical, sewer or other similar utilities service, the cost of the same shall be the personal obligation of each Owner of such Parcel. Maintenance of sewer lines serving a single Parcel shall be the responsibility of its Owner. Any Mortgagee of a first-priority Mortgage that takes title to any Parcel under an agreement in lieu of foreclosure (rather than through foreclosure) shall be liable to pay any unpaid Assessments against the same, but only to the extent of such Mortgagee's interest in such real property and only for so long as such Mortgagee actually holds such interest in such real property.

8.3 Regular Assessments.

a. Each Owner shall pay to the Management Committee to be held in trust for the benefit of the Project, its Proportionate Share of the Common Expenses on a quarterly basis within thirty (30) days following receipt of a Notice of Assessment Lien from the Management Committee setting forth such amounts owed by such Owner; provided that prior to assessing any Regular Assessments against an Owner, the Management Committee shall provide such Owner with an estimated budget of total Common Expenses and such Owner's Proportionate Share of Common Expenses for such calendar year (or remaining portion thereof); and

b. If the Management Committee or Declarant determines that the total Regular Assessments for the current year are or will become inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Management Committee's budget for that year, the Management Committee shall then immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the Common Expenses and determine the revised

amount of Regular Assessments to be paid by each Member for the balance of the year and the date or dates when due. If the estimated total Regular Assessments for the current year prove to be excessive in light of the actual Common Expenses for such year, the Management Committee may, at the sole discretion of the Management Committee, retain such excess as additional working capital or reserves (provided that such working capital or reserve shall not be accumulated to an unreasonably high level relative to subdivision projects of similar size and nature in Utah County), reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessment for such period as it deems appropriate.

8.4 Special Assessments. The Management Committee shall levy Special Assessments against an Owner to reimburse the Management Committee or Declarant for:

a. Costs incurred in bringing an Owner into compliance with the provisions of this Declaration or the Management Committee Rules;

b. Any other charge designated as a Special Assessment in this Declaration or the Management Committee Rules; and

c. Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with a Special Assessment in accordance with this Declaration or the Management Committee Rules.

8.5 Capital Improvement Assessments. In addition to the Regular Assessments, the Management Committee may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of Declarant in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Area, including, without limitation, any fixtures and personal property related to the Common Area. Without the vote of those Owners owning a majority of square feet in the Project, the Management Committee shall not impose a Capital Improvement Assessment in an amount that exceeds ten percent (10%) of the estimated annual Common Expenses to be paid in one (1) year, unless approved by a vote of the Owners equal to at least sixty seven percent (67%) of votes entitled to be cast. Any reserves collected by the Management Committee for the future maintenance and repair of the Common Area or any portion thereof shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by Declarant in a separate bank account to be held in trust for such purposes, to be held subject to the requirements and effect of this Declaration.

8.6 Exempt Property. All portions of the Project dedicated to and accepted by or otherwise owned or acquired by a public authority shall be exempt from the Assessments created herein.

8.7 Time and Manner of Payment/Late Charges and Interest. Assessments shall be due and payable by the Owners in such manner and at such times as the Management Committee shall designate, subject to the provisions of this Declaration. If not paid within thirty (30) days after its due date, each such Assessment shall have added to it a late charge equal to ten

percent (10%) of the amount of the Assessment. Thereafter the amount of such delinquent Assessment shall bear interest at the Default Rate until paid. The Management Committee may, in its discretion and without waiving the imposition of a late charge or for interest, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Management Committee or Declarant as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge or to execute on or foreclose any Lien or to otherwise enforce this Declaration, then there shall be added to the amount due costs of suit or foreclosure and reasonable attorneys' fees. All interest due under this Declaration is hereby expressly limited so that in no contingency or event whatsoever shall the amount or rate of interest paid or agreed to be paid hereunder for the loan, use, forbearance, or detention of the money exceed the maximum permissible under applicable law. If, from any circumstances whatsoever, the fulfillment or performance of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law then the obligation to be fulfilled or the interest rate to be charged shall be reduced to the maximum limit of such validity. This provision shall never be superseded or waived and shall control every other provision of this Declaration.

8.8 No Offsets. All Assessments shall be payable in the amount specified in any Assessment or notice thereof, and no offsets against such amount shall be permitted for any reason, including, without limitation, any claim or assertion that: (a) the Management Committee, Declarant or the Manager is not properly exercising its duties and powers, as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) an Owner has made and elects to make no use of the Common Area.

a. Reserves. The responsibility of the Management Committee shall be to provide for such reserves as Declarant in good faith deems reasonable reserves (provided that such working capital or reserve shall not be accumulated to an unreasonably high level relative to subdivision projects of similar size and nature in Utah County). Neither Declarant, the Management Committee nor any Management Committee Member shall have any liability to any Owner if such reserves prove to be inadequate.

8.9 Subordination of Lien. Any Lien arising due to the failure or refusal of an Owner to make timely payment of any Assessment shall be and remain subordinate to the lien of any recorded first Mortgage (including all extensions, renewals, restatements and amendments thereto) on the subject Parcel, except for the amount of an unpaid Assessment that accrues from and after the date on which such a first or the purchaser of such first Mortgage at a foreclosure sale acquires title to such Parcel, whichever occurs (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto). If any Lien for unpaid Assessments made prior to the date the first Mortgagee or other purchaser at a foreclosure sale acquires title to such Parcel has not been extinguished by the process by which such first Mortgagee or such other purchaser acquired title to such Parcel, such first Mortgagee or other purchaser shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request to the Management Committee by such first Mortgagee, such lien shall be released in writing by the Management Committee. Any unpaid Assessments extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and may also be re-allocated by the Management Committee among the Owners as part of the Common Expenses.

8.10 Enforcement of Lien. Declarant may foreclose the Lien in any manner provided or permitted for the foreclosure of mortgages or deeds of trust in the State of Utah. All of the provisions of this Article 8 relating to the enforcement of the Lien (including, without limitation, the subordination provisions in Section 8.10 hereof) shall apply with equal force in each other instance provided for in this Declaration or the Management Committee Rules in which it is stated that payment of a particular Assessment, charge or other sum shall be secured by a Lien, including, without limitation, those final portions of Sections 8.1 and 8.2 regarding the limitation of Mortgagee liability to the payment of any Assessments. Nothing herein shall be construed as requiring that the Management Committee or Declarant take any action required hereunder in any particular instance, and the failure of the Management Committee or Declarant to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance. Specifically, Declarant shall not be required to foreclose a Lien before or instead of bringing legal action directly against the delinquent Owner.

8.11 Maintenance of Owners' Property. If an Owner does not adequately maintain or keep in good repair its Parcel(s), Declarant may maintain such Parcels, and/or repair or replace such improvements thereon, or may cause the same to be maintained, repaired or replaced. The Owner of any such Parcels shall, within thirty (30) days after written notice from Declarant or the Management Committee, be required to reimburse Declarant for expenses incurred for such repair, maintenance or replacement, and Declarant or the Management Committee shall have the right to impose Special Assessments against any such Owner(s) for the payment of such amounts, which shall be secured by and subject to enforcement hereunder as a Lien.

8.12 Audit. Any Owner may, upon thirty (30) days' prior written notice to Declarant but not more than once each calendar year, call for an inspection and audit of the books and records of Declarant concerning collected Assessments, Common Expenses, and related items pertaining to the Declarant's performance of its duties hereunder for the prior three (3)-year period. Declarant shall reasonably cooperate with any such audit and shall maintain complete books and records in accordance with generally accepted accounting principles, consistently applied, for the same period as required for federal income tax reporting purposes. Such audit(s) shall take place within thirty (30) days of such Owner's request. If such audit reveals that any Owner has overpaid any such charges and unless Owner disputes such claims, Declarant shall promptly refund to each Owner the amount of such overpayment, and shall thereafter make a Special Assessment, if necessary and appropriate, regarding such overpaid amount against the underpaying Owner(s), if any. Any dispute concerning an Owner's audit shall be resolved in accordance with provisions of Article 10. Notwithstanding the anything to the contrary herein, Declarant shall not be required to submit to or cooperate with an audit of its books and records by one or more Owners more than once per calendar year.

8.13 Contest. Any provision contained herein to the contrary notwithstanding, any Owner shall have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the property within the Project owned or leased by such Owner on the basis that the recordation of such Notice of Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Declaration. The prevailing party in such action shall be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with such action.

8.14 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. If a Mortgagee delivers to the Management Committee a written request for notice of unpaid Assessments levied against a Parcel subject to a Mortgage held by that Mortgagee, the Management Committee shall report to the Mortgagee any unpaid Assessments levied against such Parcel that remain unpaid for than sixty (60) days after the same shall have become due. The Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such Mortgagee shall have a lien on the Parcel for the amounts paid with the same priority as a lien of the Mortgage held by such Mortgagee.

## ARTICLE 9

### CASUALTY

9.1 Damage to Buildings and Other Improvements. In the event any Building or other improvement (but excluding Common Area improvements, which improvements are governed by the immediately succeeding Section) 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) remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon.

#### 9.2 Damage to Common Area.

a. Repairs or replacements within the Common Area arising out of or caused by the willful or negligent act or neglect of an Owner or its invitees, licensees, guests, employees, or agents (such Owner being hereinafter referred to as the "**Responsible Party**"), shall be performed at the expense of such Responsible Party, and a Special Assessment therefor shall be levied against such Responsible Party; provided, however, that the liability of the Responsible Party for such damage to the Common Area shall not be absolute, but shall only be that for which the Responsible Party is legally responsible under Utah law. The foregoing shall include, without limitation, any settlement damage caused by any excavation, construction or excess irrigation occurring on such adjacent property. If such damage is covered by insurance, Declarant shall have the right to determine whether any claim shall be made upon such insurance.

b. In the case of damage by fire or other casualty to any Common Area that is the maintenance responsibility of Declarant, Declarant shall repair or replace the Common Area so damaged substantially in accordance with the original plans and specifications for such improvements, unless other action, including an election not to repair or replace the damaged improvements where insurance proceeds are insufficient therefor, is approved by (i) the Owners

who own at least eighty percent (80%) of the Project Square Footage, and (ii) the holders of fifty-one percent (51%) of the first Mortgages on the Parcels. If insurance proceeds are insufficient to pay the entire cost of such repairs, the Management Committee shall levy a Capital Improvement Assessment on the Owners to satisfy any deficiency between insurance proceeds and the actual cost of repair or replacement in the same manner and proportion that Assessments are levied against and collected from such Owners.

## ARTICLE 10

### DISPUTE RESOLUTION

10.1 Dispute Resolution. If a dispute arises out of or relates to this Declaration, or the breach thereof, and if the dispute cannot be settled through negotiation between the Parties to such dispute within ten (10) business days, such Parties shall first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. If the Parties to such dispute cannot settle the dispute by mediation within thirty (30) days, the dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 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, Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in its Parcel, 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.

11.2 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 Declarant (prior to the expiration of the Declarant Control Period) otherwise elects in a writing recorded with the County Recorder, Utah County, Utah.

11.3 Modification.

a. This Declaration may be modified with in any respect whatsoever during the Declarant Control Period with the consent of Declarant and without the necessity of obtaining the consent of any other Owner or any Mortgagee of Owner; provided, however if such a modification:

- (i) directly and materially affects the access to a Parcel; or
- (ii) would result in a material increase in financial obligations for an Owner;

then the Owner of any such affected Parcel must also consent to such modification.

b. Notwithstanding anything in Section 11.3(a) to the contrary, Parcel 3 Owner must consent to any modification that (i) proposes to increase the amount of Common Area from that Common Area depicted in Exhibit A-2 by more than ten percent (10%), (ii) would materially and adversely affect Parcel 3 and its use by Parcel 3 Owner as contemplated by the Parcel 3 Renderings, (ii) results in a Sign Program that involves the placement or location of signage on Parcel 3, or (iii) proposes an amendment to any of the Design Guidelines insofar as they apply to Parcel 3.

c. If this Declaration is rescinded, all Owners of any portion of the Project must consent to such rescission.

d. Any modification or rescission of this Declaration shall be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the office of the County Recorder of Utah County, Utah.

e. Without limiting the foregoing and notwithstanding any other provision of this Declaration, Declarant may modify this Declaration, at any time or from time to time during the Declarant Control Period, without the consent or agreement of any Person including, without limitation, any Owner (other than the Parcel 3 Owner) to:

- (i) Release any tracts of real property from the Project on which no building improvements are then located, and thus from the terms, covenants and restrictions of this Declaration; and/or
- (ii) Prior to the expiration of the Declarant Control Period, increase from three (3) to (5) the number of Management Committee Members and select, or provide for the selection of, such additional Management Committee Members.

11.4 Approval of First Mortgagees. Notwithstanding the provisions of Section 11.3 above, any of the following amendments, to be effective, must be approved by the majority of the Mortgagees holding first Mortgages on the Parcels at the time of such amendment:

a. Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to holders, insurers and guarantors of first Mortgages.

b. Any amendment which would require an encumbrancer after it has acquired one of the Parcels through foreclosure to pay more than its Proportionate Share of any unpaid assessment or assessments accruing against such Parcel prior to such foreclosure.

c. Any amendment which would or could result in an encumbrance being cancelled by forfeiture.

d. Any amendment relating to the insurance provisions or to the application of insurance proceeds as set forth in this Declaration or to the disposition of any money received in any taking wider condemnation proceedings.

e. Any amendment which would or could result in termination or abandonment of the Property or partition or subdivision of any Parcel in any manner inconsistent with the provisions of this Declaration.

f. No requirement for approval by a First Mortgagee provided in this Section 12.5 shall operate to:

(i) deny or delegate control over the general administrative affairs of Declarant or the Management Committee by the Management Committee Members; or

(ii) prevent Declarant from commencing, intervening and/or settling any legal proceeding.

11.5 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.

11.6 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.

11.7 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.

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

11.9 Remedies. Any Owner, the Declarant, the Management Committee and/or the Manager may prosecute any proceedings at law or in equity against any Person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him or them from so doing and/or to recover damages from or on account of such violation. All costs and expenses of any such suit or proceedings, including attorneys' fees, as well as any judgment thereof, shall be assessed against the losing party and shall constitute a lien against the real property or the interest therein in the Project belonging to such party as provided in Article 8 above, which the prevailing party may foreclose in the manner provided in



such Article 8. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

11.10 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.

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

11.12 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).

11.13 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: Rendezvous Mountain Holdings, LLC / Attn: Brian Davis  
6337 Highland Drive, Suite 2053  
Salt Lake City, Utah 84121

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

The Management Committee shall make all addresses furnished by any Owner pursuant to this Section 11.13 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 the Management Committee 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.

11.14 Estoppel Certificates. Any Owner may request from the Management Committee to deliver, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of the Management Committee'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 the Management Committee's knowledge, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s).

11.15 Jurisdiction. This Declaration and any matter arising hereunder is governed by and determined in accordance with the laws of the State of Utah.

11.16 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.

11.17 Non-Discrimination. There shall be no discrimination against or segregation of any Person, or group of Persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land of the Parcels, nor shall the transferee of any interest in the Parcels or any Person claiming under or through such transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land of the Parcels.

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

**DECLARANT:**

RENDEZVOUS MOUNTAIN HOLDINGS, LLC,  
a Delaware limited liability company

By: Slipstream Ventures, LLC, a Delaware  
limited liability company

Its: Manager

By: Brian Davis  
Brian Davis, Manager

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

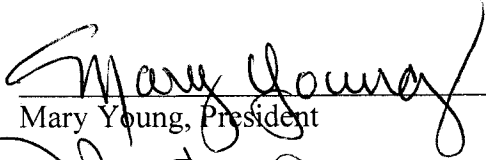
The foregoing instrument was acknowledged before me on April 13, 2016, by Brian Davis, the Manager of Slipstream Ventures, LLC, a Delaware limited liability company, the Manager of of Rendezvous Mountain Holdings, LLC, a Delaware limited liability company.

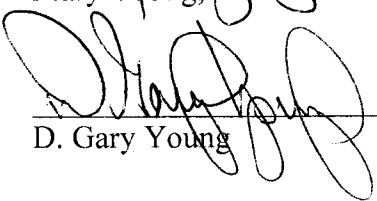
Notary Public: Michelle Farnsworth



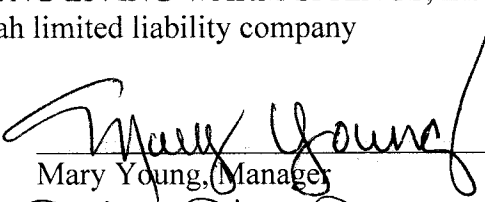
ACKNOWLEDGED AND AGREED TO BY:

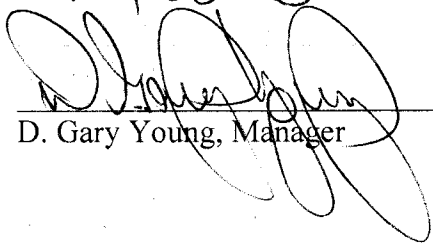
YOUNG LIVING ESSENTIAL OILS, LC,  
a Utah limited liability company

  
\_\_\_\_\_  
Mary Young, President

  
\_\_\_\_\_  
D. Gary Young

YOUNG LIVING WARM SPRINGS, LLC  
a Utah limited liability company

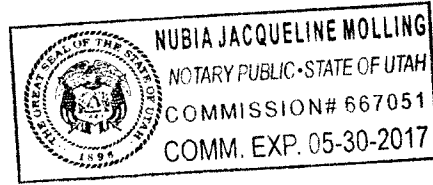
  
\_\_\_\_\_  
Mary Young, Manager

  
\_\_\_\_\_  
D. Gary Young, Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me on April 12, 2016, by Mary Young, the President of Young Living Essential Oils, LC, a Utah limited liability company.

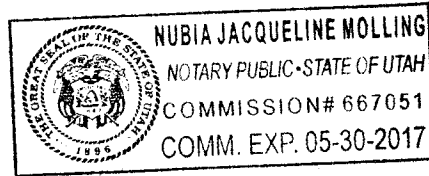
Notary Public: Nubia Jacqueline Molling



STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me on April 12, 2016, by D. Gary Young.

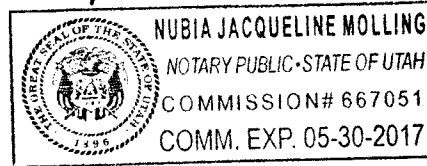
Notary Public: Nubia Jacquelin Molling



STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me on April 12, 2016, by Mary Young, a Manager of Young Living Warm Springs, LLC, a Utah limited liability company.

Notary Public: Nubia Jacqueline Molling



STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me on April 12, 2016, by D. Gary Young, a Manager of Young Living Warm Springs, LLC, a Utah limited liability company.

Notary Public: Nubia Jacqueline Molling

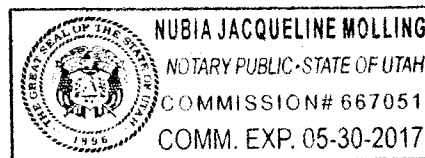


Exhibit A-1

Legal Description of the Project

The Property is located in the City of Lehi, County of Utah, State of Utah, and is further described as follows:

LOTS 1, 2, 3, 4, 5, AND 6 OF THE LEHI BOTANICAL SUBDIVISION, AMENDING LEHI INDUSTRIAL PARK PLAT "A", ACCORDING TO THE OFFICIAL PLAT RECORDED JANUARY 7, 2016 AS ENTRY NO. 1363-2016 AND AS MAP FILING NO. 14907 OF OFFICIAL UTAH COUNTY, UTAH RECORDS.

Exhibit A-2

Depiction of Project

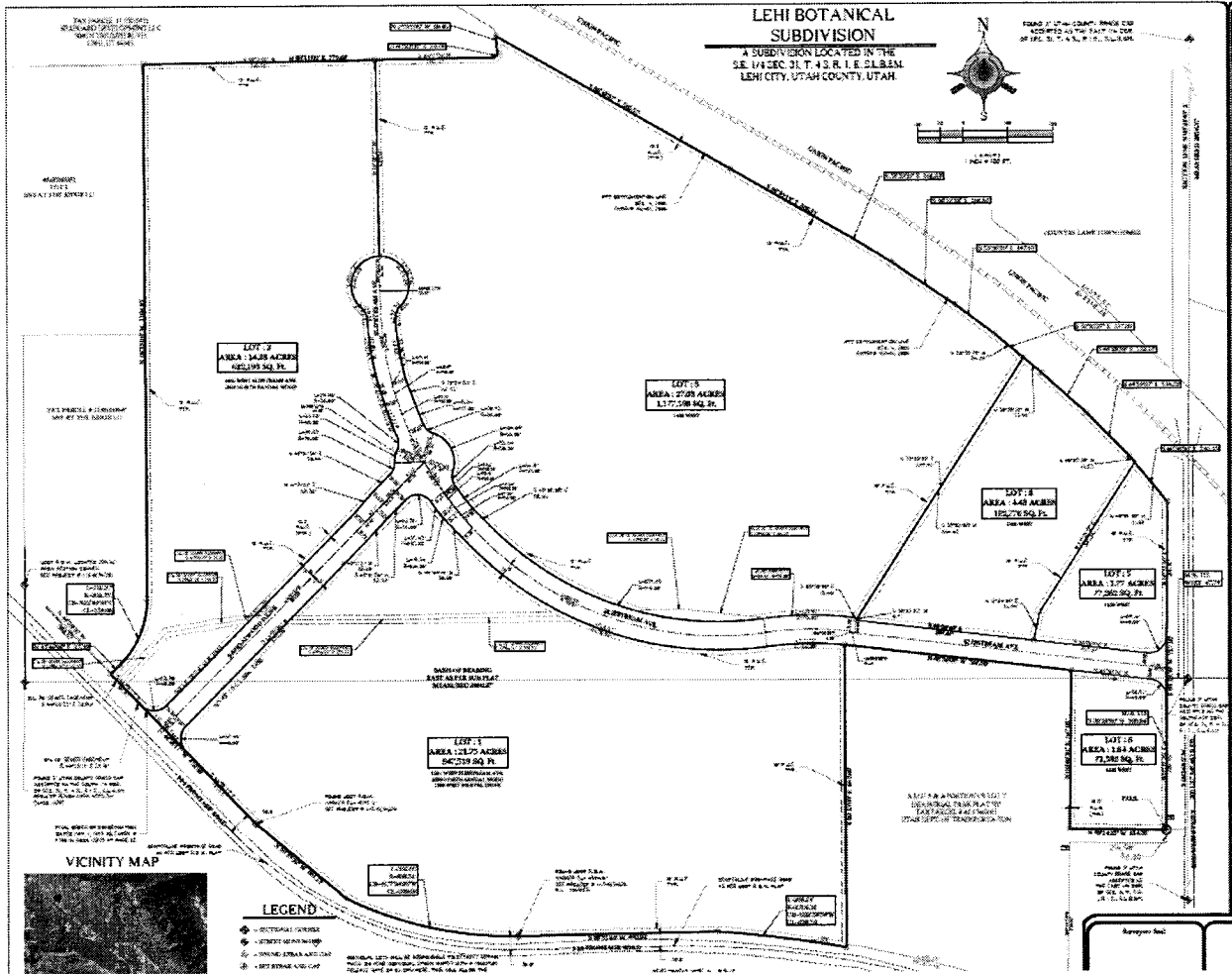


Exhibit A-2 (continued)

Description of Common Areas

One or more areas, each not to exceed 100 square feet, that may be located as follows:

- (a) on portions of Lots 1 and 2 adjacent to at the intersection of Digital Drive and Sandalwood Drive;
- (b) on portions of Lots 5 and 6 adjacent to the intersection of 1200 West Street and Slipstream Avenue;
- (c) the traffic circle located at the intersection of Slipstream Avenue and Sandalwood Drive.

Upon the construction of any Common Area improvements within any proposed Common Area, the size of such Common Area shall be limited to the size and location of such improvements.



Exhibit B

Legal Description and Depiction of Parcel 3

LOT 3, LEHI BOTANICAL SUBDIVISION, AMENDING LEHI INDUSTRIAL PARK PLAT "A", ACCORDING TO THE OFFICIAL PLAT RECORDED JANUARY 7, 2016 AS ENTRY NO. 1363-2016 AND AS MAP FILING NO. 14907 OF OFFICIAL UTAH COUNTY, UTAH RECORDS.

Said property is also known by the street address of: 1450 West Slipstream Avenue, Lehi, UT 84043



## Exhibit C-1

Design Guidelines

Special Notes: The following constitute the “Design Guidelines” for the Project, as referenced in the Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Botanical Point (the “CC&Rs”). Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the CC&Rs. Please refer to Exhibit C-2 for the Design Guidelines applicable to Parcel 3.

1. All site development shall be in accordance with the applicable Lehi City requirements, including, without limitation, all front, side and rear lot line setback requirements and parking requirements.
2. A visual connection between buildings and the natural surroundings as well as compatibility with the scale and proportion of nearby structures is desirable and encouraged.
3. Building massing and scale shall allow sufficient light and air to penetrate each proposed building. Building heights shall be compatible with, and not overwhelming to, the natural surroundings.
4. Buildings, to the extent practicable, should be oriented to take advantage of the site's existing topography, solar and wind exposure, and viewsheds. Buildings, also to the extent practicable or appropriate, should present a face to the street on which each building fronts, and, where appropriate, should include visual cues to indicate building entrances and other functions. Design elements such as canopies or architectural articulation may serve this purpose.
5. Exterior materials shall be of high quality and may include concrete, stone, stucco, metal panel, and glass. The amount of glass shall be sufficient to allow natural light to penetrate into interior building spaces and shall be visually balanced by opaque materials. Highly reflective glass is discouraged. The color palette ideally shall complement the colors in the surrounding landscape. Contrasting elements and textures that create visual interest are preferred. Sculptural shading elements are encouraged. All Class A Office Space shall also comply with the applicable requirements under the Declaration.
6. Multiple buildings on the site shall be visually compatible. Except where otherwise required by Lehi City or applicable zoning ordinances, variation in building height is desirable.
7. Building roofs may be flat, with rooftop equipment screened with opaque or semi-opaque walls or other appropriate screening elements.
8. Structured parking shall incorporate architectural elements as necessary to introduce articulation and texture in order to a) to the extent practicable, screen vehicles from view as seen from the at-grade elevation of the street on which such parking structure may front,

and b) enhance the compatibility of the parking structure with adjacent buildings and with the surrounding landscape.

9. Signage shall be scaled appropriately to any proposed buildings and the site. Monument signs may be located at vehicle and pedestrian entrances to the site in accordance with applicable zoning requirements. Building signage may include identifying information such as corporate logos and address numbers near main entrances or elsewhere on the site. Wayfinding signs may be located on the site along drives and paths, as and where necessary or appropriate.

10. Public use space may include a combination of hardscape and landscape elements, including, but not limited to, plazas, lawns, game courts, picnic tables, benches and other outdoor furniture, and other elements as appropriate or desired.

11. Site development adjacent to streetscape elements should be compatible with such streetscapes and should include vegetative plantings and lighting elements as necessary or appropriate.

12. A vehicular driveway area may be provided near the main entry of the site's primary building. This driveway area may be shared with pedestrians and incorporate special or differentiated paving materials or design. Site drives, parking islands and buffer spaces shall be landscaped appropriately and site drives, parking lots and walkways shall be lighted appropriately.

13. The landscape design may incorporate native, drought-tolerant plant materials consistent with, or in consideration of, the surrounding ecosystem.

14. Exterior site furniture shall be a compatible design element of the building and landscape design.

## Exhibit C-2

Parcel 3 Design Guidelines

Special Notes: The following constitute the “Design Guidelines” for the Project, as referenced in the Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Botanical Point (the “CC&Rs”). Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the CC&Rs. Further, certain of the guidelines set forth in this Exhibit C-2, as noted by reference to “Amended Guideline for Parcel 3”, shall apply to Parcel 3 and shall supersede the applicable guideline for which the amended guideline relates. Finally, these Guidelines shall be construed to the fullest extent reasonably possible to allow, without modification, the Parcel 3 Owner’s plans (as may be modified from time to time) with respect to Parcel 3.

1. All site development shall be in accordance with the applicable Lehi City requirements, including, without limitation, all front, side and rear lot line setback requirements and parking requirements.

2. A visual connection between buildings and the natural surroundings as well as compatibility with the scale and proportion of nearby structures is desirable and encouraged.

a. Amendment to Guideline for Parcel 3: Parcel 3 Owner may use contrasting colors or materials, and may alter the scale and proportion of structures upon Parcel 3, in a manner which is consistent with the Parcel 3 Renderings.

3. Building massing and scale shall allow sufficient light and air to penetrate each proposed building. Subject to the CC&Rs, building heights shall be compatible with, and not overwhelming to, the natural surroundings.

4. Buildings, to the extent practicable, should be oriented to take advantage of the site's existing topography, solar and wind exposure, and viewsheds. Buildings, also to the extent practicable or appropriate, should present a face to the street on which each building fronts, and, where appropriate, should include visual cues to indicate building entrances and other functions. Design elements such as canopies or architectural articulation may serve this purpose.

5. Exterior materials shall be of high quality and may include concrete, stone, stucco, metal panel, and glass. The amount of glass shall be sufficient to allow natural light to penetrate into interior building spaces and shall be visually balanced by opaque materials. Highly reflective glass is discouraged. The color palette ideally shall complement the colors in the surrounding landscape. Contrasting elements and textures that create visual interest are preferred. Sculptural shading elements are encouraged. All Class “A” Office Space shall also comply with the applicable requirements under the Declaration.

a. Amendment to Guideline for Parcel 3: Parcel 3 Owner may use contrasting colors or materials in a manner which is consistent with the Parcel 3 Renderings.

6. Multiple buildings on the site shall be visually compatible. Except where otherwise required by Lehi City or applicable zoning ordinances, variation in building height is desirable.

a. Amendment to Guideline for Parcel 3: Parcel 3 Owner may construct two or more buildings which are the same or similar in height or appearance in a manner which is consistent with the Parcel 3 Renderings.

7. Building roofs may be flat, with rooftop equipment screened with opaque or semi-opaque walls or other appropriate screening elements.

8. Structured parking shall incorporate architectural elements as necessary to introduce articulation and texture in order to a) to the extent practicable, screen vehicles from view as seen from the at-grade elevation of the street on which such parking structure may front, and b) enhance the compatibility of the parking structure with adjacent buildings and with the surrounding landscape.

9. Signage shall be scaled appropriately to any proposed buildings and the site. Monument signs may be located at vehicle and pedestrian entrances to the site in accordance with applicable zoning requirements. Building signage may include identifying information such as corporate logos and address numbers near main entrances or elsewhere on the site. Wayfinding signs may be located on the site along drives and paths, as and where necessary or appropriate.

a. Amendment to Guideline for Parcel 3: Parcel 3 Owner may incorporate signage elements into the design of the exterior of its buildings consistent with the City's zoning ordinance. Furthermore, subject to compliance with the City's zoning ordinance, Parcel 3 Owner may install an electronic display signage consistent with the Parcel 3 Renderings.

10. Public use space may include a combination of hardscape and landscape elements, including, but not limited to, plazas, lawns, game courts, picnic tables, benches and other outdoor furniture, and other elements as appropriate or desired.

11. Site development adjacent to streetscape elements should be compatible with such streetscapes and should include vegetative plantings and lighting elements as necessary or appropriate.

12. A vehicular driveway area may be provided near the main entry of the site's primary building(s). This driveway area may be shared with pedestrians and incorporate special or differentiated paving materials or design. Site drives, parking islands and buffer spaces shall be landscaped appropriately and site drives, parking lots and walkways shall be lighted appropriately.

13. The landscape design may incorporate native, drought-tolerant plant materials consistent with, or in consideration of, the surrounding ecosystem.

a. Amendment to Guideline for Parcel 3: Nothing herein shall amend or alter the right of Parcel 3 Owner, subject to compliance with the City's zoning ordinance, to conduct certain agricultural uses upon the Property as set forth in Section 1.32 of the CC&Rs.

Exhibit D

Description of the Project Infrastructure

Those improvements more fully described and depicted in the Subdivision Plat Construction Drawings for Botanical Point Subdivision, prepared by Spinnaker Engineering Science, LLC, under Project No. se1441, signed and dated 12/9/2015.