

RETURN RECORDED DOCUMENT TO:

LIGHTHOUSE PINNACLE, LLC  
12012 South 700 East, Suite 220  
Sandy, UT 84070

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Gary W. Ott  
Recorder, Salt Lake County, UT  
NATIONAL TITLE AGENCY LLC  
BY: eCASH, DEPUTY - EF 28 P.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND  
RECIPROCAL  
EASEMENT AGREEMENT**

**FOR**

**BALLARD PROFESSIONAL PLAZA  
DRAPER, UTAH**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND  
RECIPROCAL  
EASEMENT AGREEMENT**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT** (this “**Agreement**”) is made and entered this 1<sup>st</sup> day of December, 2013, by **LIGHTHOUSE PINNACLE, LLC**, a Utah limited liability company (“**Developer**”).

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

**A.** These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. Developer intends to refer to those definitions in conjunction with the use thereof in these Recitals.

**B.** Developer is the owner of three (3) Parcels of real property comprising a Property located in the City of Draper, County of Salt Lake, State of Utah, and described in Exhibit “A” attached hereto (each a “**Parcel**” and collectively, “**Parcels**”) and shown and delineated on the site plan attached hereto as Exhibit “B” (“**Site Plan**”).

**C.** Developer (and/or its successors and assigns) will cause to be constructed and thereafter to operate, or cause to be operated as part of the Property, one or more buildings and other improvements on the Parcels.

**D.** Developer has developed and intends for the respective Parcels to be operated as integral parts of the Property, as generally shown on the Site Plan. To effect the further common development, use and operation of the Property, Developer desires to impose certain covenants and agreements as part of a general plan for beneficial use of the Parcels and to grant each to the other certain reciprocal easements in, to, over and across the Parcels.

**NOW, THEREFORE**, in consideration of foregoing Recitals and the covenants and agreements contained herein the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as “covenants and restrictions”) hereinafter set forth.

**1. Definitions.**

**1.1 Defined Terms.** Each reference in this Agreement to any of the following terms shall have the meaning set forth below.

**1.2 Affiliate.** The term “**Affiliate**” means, with respect to any Person, any other Person directly or indirectly, controlling, controlled by, or under common control with such Person. For purposes of this definition, “control” (including with correlative meanings, the term “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession of a legal and equitable interest in the Person sufficient to grant the power to direct or cause the direction of the management and policies of that Person.

**1.3 Appropriation.** The term “**Appropriation**” shall mean the taking of or damage to the Property, any building or improvement therein, any Parcel therein, or any portion thereof, by reason of any exercise of the power of eminent domain (including inverse condemnation), or any transfer of all or any

part of the Property, any building or improvement therein, or any Parcel, or any portion thereof, in avoidance of an exercise of the power of eminent domain.

**1.4 Approving Party.** “Approving Party” shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Agreement. There shall be one Approving Party representing the Parcel 1 and one Approving Party representing the Parcels 2 and 3. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position.

**1.5 Building Area.** The term “Building Area” shall mean those areas upon which will be located Buildings and other improvements, intended for office and retail or other uses pursuant to the provisions of Article 3.

**1.6 Building or Buildings.** The term “Building” or “Buildings” mean the buildings located or to be located on the respective Building Areas on the Developer Parcels as the context may appropriately require, as the same may exist from time to time including any replacements thereof, together with appurtenant truck loading or delivery docks or areas, ramps and wells.

**1.7 Common Area.** The term “Common Area” means all areas of the Property shown on the Site Plan (other than Building Areas, and related building canopies, support columns, pilasters, overhangs and footings and appurtenant building truck loading or delivery docks or areas, ramps and wells) encompassing, without limitation, all of those facilities within or upon the Property for the non-exclusive use of Parties, Occupants and Users in common, including but not limited to, Parking Areas, service areas, driveways, areas of ingress and egress, areas containing buildings or structures used in connection with the maintenance of the Common Area, roadways, delivery areas, landscaped areas (including planters and areas located between perimeter sidewalks and buildings or next to exterior building walls), areas containing signs or structures advertising the common name given for the Property, together with the signs and structures constructed thereon (but not areas containing the signs of individual Occupants, or the Occupant signs or sign structures), common corridors, and public restrooms, if any, accessible from pedestrian passageways not within the leased space of any Occupant.

**1.8 Developer.** The term “Developer” means (i) Lighthouse Pinnacle, LLC, while and for so long as it owns fee title to all or any part of the Property, and (ii) in the event Lighthouse Pinnacle, LLC ceases to own fee title to any part of the Property, the “Developer” shall mean the owner from time to time of fee title to the Property (or if there be more than one such owner, the person(s) or entity(ies) owning the largest total acreage comprising the Property).

**1.9 Indemnify.** The term “Indemnify” means indemnify, defend, with counsel reasonably satisfactory to the indemnitee, and protect and hold harmless the other Person, and such other Person’s officers, directors, agents, servants, employees, partners, Sale and Leaseback lessors and Affiliates from and against all loss, claims, liability, cost or expense (including the reasonable attorneys’ fees) (collectively, “Claims”) incurred by the indemnitee as a result of or caused by the matter which is the subject of the indemnity, but excluding Claims arising in whole or in part from the active negligence or intentional wrongdoing of the indemnitee, or its officers, directors, agents, servants, employees, partners, Sale and Leaseback lessors or Affiliates. The indemnitee shall give the indemnitor prompt notice of any suit, action or proceeding with respect to which the indemnitee is entitled to indemnification pursuant to this Agreement. Failure to give such notice shall not, however, in any manner negate or invalidate the obligation to provide such indemnity, except to the extent the indemnitor is prejudiced thereby.

**1.10 Mortgage and Mortgagee.** The term “Mortgage” means an indenture of first mortgage or first deed of trust on a Parcel, or, a Sale and Leaseback. The term “Mortgagee” means either: (i) the mortgagee under a Mortgage, (ii) the trustee and beneficiary under a Mortgage, (iii) the fee owner or sublessor following a Sale and Leaseback. The term “Mortgagee” shall not refer to any of the foregoing Persons when in possession of the Parcel of any Party. A “Sale and Leaseback” means a transaction whereby a Party conveys the fee or a leasehold estate in such Parcel for financing purposes only and such

conveyance is followed immediately by a leaseback or sub-leaseback of the entirety of the Parcel or the improvements thereupon to such Party, or to a parent or subsidiary of such Party.

**1.11 Occupant.** The term “**Occupant**” means each Party and any Person or Persons from time to time entitled to the use and occupancy of any portion of any Building Area in the Property by ownership thereof or under any lease, license or concession agreement, or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy.

**1.12 Parcel.** The term “**Parcel**” means each legally subdivided subdivision lot.

**1.13 Parcel Owner.** The term “**Parcel Owner**” means each fee title owner of each respective subdivision lot.

**1.14 Parking Area.** The term “**Parking Area**” means that portion of the Common Area used for parking and passage of motor vehicles, including without limitation, incidental and interior roadways, walkways, curbs and landscaping within the areas used for such parking, together with all improvements as permitted by the provisions of this Agreement which are at any time erected thereon.

**1.15 Parking Ratio.** The term “**Parking Ratio**” means the ratio of parking spaces to Floor Area required to be maintained in the Parking Area of the Property pursuant to Section 8.1.

**1.15 Party.** The term “**Party**” shall mean each signatory hereto and, after compliance with Article 13 hereof successors and/or assigns who become an owner of any portion each respective Parcel.

**1.16 Person or Persons.** The term “**Person**” or “**Persons**” means individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals, or any other form of business or legal entity.

**1.17 Property.** The term “**Property**” means the Parcels as shown on the Site Plan, including all Building Areas and Common Area.

**1.18 Separate Agreement.** The term “**Separate Agreement**” means any separate agreement to be entered into, from time to time, among any of the Parties whereby such Parties set forth certain agreements not set forth herein.

**1.19 Users.** The term “**Users**” means all Occupants and their respective officers, partners, directors, licensees, invitees, customers, contractors, agents, and concessionaires.

**1.20 Certain Other Terms.** Certain other terms shall have the meaning set forth elsewhere in this Agreement for each such term.

## **2. Property Subject To This Declaration: Additions Thereto.**

**2.1 Existing Property.** The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Draper, Salt Lake County, Utah, and is more particularly described on Exhibit “A” attached hereto, all of which real property shall hereinafter be referred to as “Existing Property.”

**2.2 Additions to Existing Property.** Additional lands may become subject to this Declaration in the following manner:

(a) **Additions.** The Parcel Owners shall have the right to bring within the scheme of this Declaration additional properties as they see fit.

(b) The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the

additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

(c) Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(d) Other Additions. Upon approval in writing of the Parcel Owners the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of this Agreement, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection (a) hereof.

### 3. **Grant of Reciprocal Easements.**

**3.1 Grant of Easements by Parties.** Each Parcel Owner shall have easements over, across, in, under and through: (i) Common Area of its Parcel appurtenant to and for the benefit of each other Parcel, for the uses and purposes set forth in Section 3.2, and (ii) the Building Areas of its Parcel appurtenant to and for the benefit of each other Parcels, for the uses and purposes set forth in Section 3.3, and (iii) in each case, for the duration specified in each instance in Section 3.4, and subject to all the terms, conditions and limitations set forth in Sections 3.2, 3.3, and 3.4. Each easement granted herein shall in each instance be: (A) appurtenant to and for the benefit of the Parcel occupied by each grantee of such easement, and (B) nonexclusive for use in common with the grantor by the grantee(s).

**3.2 Common Area Easements.** The Common Area on each Parcel shall be used only for the following purposes related to the businesses and activities conducted in the Property:

(a) **Parking.** Parking in Parking Areas of Users' motor vehicles.

(b) **Ingress and Egress.** Ingress and egress by any Users and any motor vehicles of such Users to and from any portion of the Common Area, and User access to and from the public streets adjacent to the Common Area.

(c) **Pedestrian Traffic.** Pedestrian traffic by Users: (i) between business establishments in the Building Areas, (ii) between the Building Areas and Common Area, and (iii) between the Building Areas and Common Area and the adjoining public streets.

(d) **Comfort and Convenience.** Comfort and convenience of Users by installation of minor convenience facilities, such as mailboxes, public telephones, and benches; provided, however, that no such minor facilities shall unduly interfere with, restrict or impede other uses of the Common Area provided for herein.

(e) **Temporary Construction Activity.** Construction, maintenance, repair, replacement, rearrangement and remodeling permitted under this Agreement of buildings and improvements within Building Areas and Common Area. All such work shall be performed in compliance with the applicable provisions of Article 5.

(f) **Service and Delivery Vehicles.** Ingress, egress, and temporary parking of delivery and service vehicles traveling to and from the Building Areas, or any portion thereof, and access to and from the public streets adjacent to the Property, for the delivery of goods, wares, merchandise, furniture, fixtures, supplies and equipment, and the rendition of services to any Occupant.

(g) **Doors and Exits.** The opening onto the Common Area of doors and other exits of buildings in the Building Areas.

(h) **Foundations, Footings, Supports and Common Walls.** Installation, repair, replacement and maintenance of building foundations, footings, supports, and common walls extending from any portion of a Building Area of any Parcel, over, onto, under and into the Common Area; provided, however, that building foundations, footings, supports and common walls shall not extend beyond a lateral distance of six feet (6') into the Common Area.

(i) **Overhangs and Canopies.** Minor encroachments of building overhangs, canopies and support columns, eaves and signs, and pilasters and other building columns or pillars extending from a Building Area over, into and onto the Common Area.

(j) **Repair, Maintenance, and Replacement.** Subject to the conditions and limitations specified in this Article 3 and Article 5 with respect to construction activities, ingress, egress and access over, along, and under each Party's Parcel (other than within Building Area) for the purpose of effectuating any necessary repairs, maintenance or replacements in connection with the use of the common non-exclusive easements and exercise of the other rights granted under this Agreement with respect to each Parcel, as permitted under this Agreement.

(k) **Access Roads.** Pedestrian and vehicular traffic within and over all parking areas and associated driveways located in the Property as shown and designated on Exhibit "B" as "**Access Roads**". The grant of easements for the use of the Access Roads includes the following rights and is subject to the following restrictions and reservations:

(i) The use of the Access Roads easements by any Person entitled under this Agreement to use thereof shall be nonexclusive and in common with any other such Persons.

(ii) Each Party agrees not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and in accordance with the provisions of this Section 3.2 to prevent a dedication thereof or the accrual of any rights to the public therein.

Each Party hereby reserves the right to eject or cause the ejection from the Common Area of its Parcel of any Person or Persons not authorized, empowered, or privileged to use the Common Area of such Parcel and each Party reserves the right to close off the Common Area of its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, the prior to closing off any portion of the Common Area, as herein provided, such Party: (i) shall have received the advice and recommendation of its regular legal counsel to proceed in such a manner, and (ii) shall to the extent practical under the circumstances give reasonable advance written notice to each other Party of its intention so to do, and shall coordinate such closing with each other Party so that no unreasonable interference with the operation of the Property shall occur.

(l) **Storm Drainage.** An easement upon, over, under and across all of the driveways and parking areas now and from time to time existing on each Parcel in the Property for the purpose of storm drainage between all portions of the Property Parcels, and to and from all abutting streets or rights of way benefiting the Property. This access easement shall not prohibit the right of the Parcel Owners to reconfigure or construct roadways and vehicular passageways, driveways, and driving lanes, or to construct and maintain, within the area affected by this easement, traffic and parking control islands and other such facilities, on their respective portion of the Parcels, so long as any such action does not unreasonably prevent the drainage of storm runoff between each of the Parcels, and to the public roads, as appropriate.

**3.3 Building Area.** The Building Areas on each Parcel shall be subject to the following uses for the benefit of each other Parcel:

(a) **Foundations, Footings, Party Walls and Load Bearing Walls.** Installation, repair, replacement and maintenance of building foundations, footings, party walls and load bearing walls

required in connection with construction of improvements in the Building Areas or Common Area on the Parcels; provided that, any such installation, repair, replacement or maintenance by a Party on another Party's Parcel shall not: (i) materially interfere with improvements on such other Party's Parcel, or (ii) increase the cost of operation or maintenance of the improvements on such other Party's Parcel, unless the Party performing such installation, repair, replacement or maintenance agrees in writing, in a form reasonably acceptable to such other Party, to reimburse such other Party for such increased costs; and provided, further, that such foundations, footings, party walls and load bearing walls shall not extend beyond a lateral distance of six feet (6') from the Building Area limit line upon which the building is constructed (as approved in writing by Developer) or from the improvements located in the Common Area. Nothing herein contained shall relieve a Party of its obligation to use best efforts to construct entirely within Building Area limit lines (as approved in writing by Developer). Each grantor of an easement under this Section 3.3(a) covenants to the grantee of such easement that if all or any part of any grantor's building is removed or destroyed or not repaired, it will leave in place any common foundations, footings, party walls and load bearing walls (or portions thereof) where shared jointly between such grantor and grantee. The grantor of an easement under this Section 3.3(a) shall be obligated to leave the common foundations, footings, party walls and load bearing walls in place only for so long as that portion of the building of the grantee of such easement sharing such common foundations, footings, party walls or load bearing walls (as originally constructed or as replaced under this Agreement) shall stand or shall be in the process of being replaced.

(b) **Encroachments.** Subject to the provisions of Section 3.3(a) above, minor encroachments of building overhangs, support columns canopies and eaves, but only if: (i) approved in writing by the Party owning the burdened Parcel and the Occupant occupying the burdened Parcel and (ii) such minor encroachment upon the Building Area of another Party's Parcel does not materially interfere with improvements on, or the use and enjoyment of, such other Party's Parcel.

(c) **Utility Connections.** Connection to or with utility installations, provided, however, that: (i) no such use shall be allowed in a manner which unreasonably burdens the affected Parcel, results in interference with the improvements thereon, impairs or diminishes the effectiveness of the existing system, inconveniences unreasonably the Occupants thereof, or adversely affects the fire insurance rating standard of the building on the affected Parcel; (ii) no such utilities and installations shall be located on a Party's Parcel without the consent of such Party; and (iii) no common utilities facilities may be located on or under the Building Area of any Parcel without the consent of the Party occupying the affected Parcel, which consent may be withheld in such Party's sole and arbitrary discretion, whether reasonable or unreasonable under the circumstances.

**3.4 Duration of Easements.** Except as otherwise provided in this Section 3.4 or in Section 3.2(k) hereof, all of the easements under Sections 3.2 and 3.3 granted under Section 3.1 shall automatically terminate and be extinguished upon the expiration or prior termination of this Agreement pursuant to Section 16.2(b).

(a) **Certain Easements Terminated on Occurrence of Certain Events.** The easements granted between the Parcels under Sections 3.2(h) and (i) and Sections 3.3(a) and (b) shall remain in existence until the later of: (i) the termination of this Agreement pursuant to Section 16.2(b), or (ii) when the building or other improvement benefited by such easements is removed, razed, damaged or destroyed and not repaired or replaced within two (2) years after such removal, razing, damage or destruction.

(b) **Termination of Easements on Abandonment.** The easements granted between the Parcels pursuant to Sections 3.2 and 3.3 shall terminate as between the Parcels benefited and burdened thereby if the use thereof for the benefit of a Parcel is abandoned for a period of two (2) years. Abandonment and termination of an easement hereunder shall be conclusively established for the benefit of any Parcel burdened by such easement, if:

(i) The Party, if this Agreement is still in effect as to such Party's Parcel, and if not, the then record owner of the fee of the Parcel, burdened with any such easement gives written

notice by United States certified or registered mail, return receipt requested, to: (i) the Parties to this Agreement, if this Agreement is then still in effect as to any Parcel, at the then address specified by each Party under Section 16.9(a) below, (ii) the then record owner of the fee of the Parcel(s) benefited by such easement at the address given for mailing tax statements in the office of the Assessor of the County of Salt Lake, State of Utah, and (iii) the then record owner, if any, of any leasehold interest in such benefited Parcel, which notice (A) states that such easement has been abandoned by virtue of non-use of such easement for a two (2) year period; (B) identifies by name and address the Party or record owner of the Parcel(s) burdened by such easement giving the notice; (C) describes both the Parcel(s) benefited and the Parcel burdened by such easement; and (D) identifies the Party(ies) (if this Agreement is still in effect as to such Parties' Parcel(s)), and the then record owner of the fee, of the benefited Parcel and the record owner of any leasehold interest therein; and

(ii) Concurrently therewith the Party or record owner of the fee interest of the burdened Parcel giving notice records, in the Office of the Recorder of the County of Salt Lake, such notice of abandonment, together with a certificate verifying that such notice has been served on the Parties (if this Agreement is still in effect as to such Parties' Parcels), the then record owner of the Parcel benefited by such easement and the then record owner, if any, of the leasehold interest in such benefited Parcel as provided in Section 3.4(b)(i) above; and

(iii) Any Party or any record owner of the fee of the benefited Parcel or any record owner of a leasehold interest in such Parcel, within ninety (90) days after receipt of the notice referred to in Section 3.4(b)(i) above, fails to serve by mail, in the manner provided in Section 3.4(b)(i) above, upon the Party or then record owner of the Parcel burdened by such easement at the address set forth for such Party or record owner in its notice under clause (B) of Section 3.4(b)(i) above, and concurrently

(iii) therewith record in the Office of the Recorder of the County of Salt Lake an affidavit which (A) identifies the name and address of the Person giving the affidavit and the basis upon which such Person claims to have the requisite record interest in the benefited Parcel; (B) states the use of the easement which has been made within such two (2) year period which forms the basis of the claim of non-abandonment; (C) identifies Parties (if this Agreement is still in effect as to such Parties' Parcel(s)) and the record owners of the fee of the burdened and benefited Parcels; and (D) describes both the Parcel(s) benefited and the Parcel(s) burdened by the easement. Failure of any Person having the requisite record interest in the Parcel benefited by the abandoned easement to serve and record the affidavit called for by Section 3.4(b)(iii) within the ninety (90) day period therein specified shall create a conclusive presumption, binding upon all Persons owning any interest in either the Parcel(s) benefited or the Parcel(s) burdened by the easement, that such easement is abandoned and terminated. Any Person at any time acquiring an interest in any Parcel after the notice referred to in Section 3.4(b)(i) above has been served by mail and placed of record in accordance with Section 3.4(b)(ii) above shall be entitled to rely absolutely on such failure as conclusive evidence that such easement has been abandoned and terminated. All notices under this Section 3.4(b) shall be served in the manner specified in Section 16.9(a), subject to address changes made in accordance therewith which are then in effect as to any Party, regardless of whether this Agreement is then in effect.

(c) **Certain Easements Perpetual.** Notwithstanding anything to the contrary contained herein, the easements granted by Section 3.2(k) shall be perpetual and shall survive the termination of this Agreement.

#### 4. **Covenants Regarding Property Use and Operation.**

4.1 **Uses.** Neither the Property nor any part thereof shall be used, and no building or other improvement shall be constructed, maintained or used, except for retail, office and commercial service uses common to a first-class office building and retail building in the State of Utah, or as provided for in Section 4.4(a). Notwithstanding the foregoing, there shall be no use made of the Property (or any portion thereof) which is a use prohibited by Exhibit "C", attached hereto and made a part hereof by this reference.

#### 4.2 **Building Height Area and Height Limitations.**



(a) **Building Area Limit Lines.** All Buildings (including entryways and appurtenant delivery areas) to be located on the Parcels shall only be placed or constructed within the Building Area limit lines as approved in writing by Developer. In no event shall any Building, structures or Occupant signs or sign structures be placed by any Party within the Common Area, except as specifically permitted by this Agreement or as approved in writing by Developer.

(b) **Maximum Floor Area.** All Buildings to be developed and constructed on the Parcels shall initially contain the number of square feet approved in writing by Developer.

(c) **Height Limits.** No Building or other improvements on Parcels 2 or 3 shall exceed a height of twenty four feet (24), all measured from the grade of the pad to and including the highest point of any buildings or structures including decorative features, parapets, air-conditioning units, equipment, screening or other rooftop items.

**4.3 Building Upkeep and Maintenance.** Each Party shall, without cost or expense to any other Party, provide for appropriate upkeep and maintenance for the exterior of the Buildings and other improvements of its Parcel so as to ensure that the Property, and each part thereof, is maintained in a first-class manner and retains at all times the appearance of a first class office building and retail building. Such upkeep and maintenance shall also include the prompt removal of graffiti or other defacement from building exterior surfaces.

**4.4 Prohibited Operations and Nuisances.**

(a) **Limitation on Detrimental Characteristics.** No use or operation will be made, conducted or permitted on any part of the Property Site, which use or operation is clearly objectionable to the development or operation of the Property as a first class office building and retail building.

(b) **Contest of Laws.** Each Party, without cost or expense to any other Party shall promptly comply or cause compliance with all laws, ordinances, rules and regulations of any governmental authority having jurisdiction which may at any time be applicable to the Buildings and other improvements on its Parcel; provided, however, that each Party shall have the right to contest, by appropriate legal or administrative proceedings, the validity or application of any such law, ordinance, rule or regulation and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible, unless such delay would render the Property, or any portion thereof, liable to forfeiture, involuntary sale or loss, or result in involuntary closing of any business conducted thereon, or subject any other Party or Occupant to civil or criminal liability, in which case the affected Party shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with such law, ordinance, rule or regulation. If compliance with any such law, ordinance, rule or regulation would prevent the Party to whose Parcel such law applies from performing any of its obligations under this Agreement, and such Party does not contest the applicability or validity of such law, ordinance, rule or regulation, any other Party may contest the same in accordance with the procedures and subject to the limitations hereinabove set forth, and during the pendency of such contest, the Party whose Parcel is affected shall delay compliance in accordance with the provisions contained hereinabove. Each non-contesting Party shall cooperate to the fullest extent necessary with any contesting Party in any proceeding undertaken pursuant to this Section 4.4(c), including execution of necessary documents or consents to such contest, provided that all costs and expenses incurred with respect to such cooperation shall be paid by the contesting Party and provided, further, that a Party or its Parcel shall not thereby incur any civil or criminal liability. Notwithstanding anything to the contrary herein contained, this Section 4.4(c) shall not apply to any tax contest or Appropriation which is subject to Articles 7 or 11.

**4.5 Rules and Regulations; Employee Parking and Deliveries.** Developer may from time to time, promulgate and impose rules and regulations upon Occupants of the Property pertaining to the use of Buildings, other improvements and Common Area by Occupants and Users, and establishing employee parking regulations and regulations with respect to delivery, service and related vehicles, time of delivery and places of delivery. Each Party shall require its Occupants and the employees, agents, contractors,

licensees and concessionaires of such Party and such Occupant to park within the Parking Areas of such Party's Parcel.

**4.6 Parking Area Levies.** No Party nor any Occupant shall impose or attempt to impose any charge, service fee or exact any other consideration in exchange for the right of a User to enter or depart from or park a motor vehicle in the Property or Parking Area in connection with use of the Common Area for purposes contemplated herein, unless such charges are lawfully ordered by appropriate governmental authority having jurisdiction over the Property.

**4.7 No Walls, Fences, or Barriers.** Subject to the provisions contained in Article 4 concerning construction activities, no walls, fences or barriers of any sort or kind shall be constructed or erected in the Common Area, or any portion thereof, without the prior written consent of Developer.

**4.8 Signs.** No Party shall place or allow or cause to be placed any signs of any type in or about the Property or upon the exterior of any Buildings except as approved in writing by Developer. Except as shown on the Site Plan, no monument or pylon signs shall be located in the Property except as approved in writing by Developer.

**5. General Construction Requirements.**

**5.1 Party Work.** Any Party that acquires any portion of the Developer Parcels, shall, at its sole cost and expense, promptly and diligently after the acquisition of its respective Parcel construct the Building improvements and the Common Area improvements on its Parcel in accordance with Final Plans (hereinafter defined) prepared by such Party and approved in writing by Developer. All Buildings and other improvements on the Developer Parcels shall be constructed within the Building Area therefore approved in writing by Developer. Each Party's construction responsibilities shall include all buildings and all Common Area (including all Parking Area and Access Roads) on such Party's Parcel and other on-site improvements; dumpster pad, enclosure and screening; signage; underground storm water systems, including storage and filtration; all requisite building permits; and the bringing to the buildings on such Parcel improvements for sewer, water, electric, gas (if available), telephone and other utility lines from the location provided by Developer, and any connection fees, fixture changes, utility availability fees, impact fees, traffic mitigation fees, meter fees, taxes and permit fees payable with respect thereto.

**5.2 Plan Approval.**

**(a) Building Area Plans.** Any initial construction or subsequent alteration of any Buildings or other improvements shall be made, in each instance, only in accordance with Final Plans therefor first approved in writing by Developer. Without limiting the foregoing, each Party shall be required to obtain Developer's prior written approval of all of the following matters respecting the Buildings or other improvements located on such Party's Parcel: (i) the maximum size and height of its Buildings and other improvements, (ii) the configuration and location of its Buildings and other improvements on its Parcel, and (iii) the exterior elevations, design and treatment of its Buildings and other improvements. In all cases, the exterior elevations, design and treatment of its Buildings and other improvements and any additions, enlargement, renovations, alternations or improvements thereto must be architecturally harmonious, in Developer's reasonable opinion, with the exterior design and treatment of the improvements constructed (or to be constructed) within the Property.

**(b) Common Area Plans.** Any initial construction or subsequent alteration of the Common Area (including Parking Area and Access Roads) shall be made, in each instance, only in accordance with final plans and specifications therefor first approved in writing by Developer.

**(c) Final Plans.** As used herein, the term "Final Plans" shall mean, as applicable, the plans and specifications approved by Developer in writing for each of Buildings, other improvements and Common Area.

**5.3 Construction and Installation of Property Improvements Generally.**

(a) **Construction Work Generally.** All construction, alteration or repair work undertaken by any Party upon any Parcel pursuant to any easement granted herein, or permitted by any other provision of this Agreement, shall be accomplished in the most diligent manner possible. The Party undertaking such work shall minimize any disruption or inconvenience caused by such work to the other Occupants or Users of the affected Parcel(s), and shall provide for the safety and convenience of all Occupants and Users of the affected Parcel(s). Such work shall be accomplished by the Party undertaking it in such manner as to prevent any damage and minimize any adverse effects which might be caused by such work to other Parties, the affected Parcel or the Occupants and Users thereof, and cause as little disruption of and interference with use of the Common Area and other Buildings and other improvements as reasonably possible. Dust, noise and other effects of such work shall be controlled by the Party undertaking the work using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area. The Party undertaking such work shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. In addition, the Party undertaking such work shall pay all costs and expenses associated therewith and shall indemnify each other Party from all Claims attributable to the performance of such work. All such work shall be undertaken only after giving each other Party prior written notice of the work to be undertaken, the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed.

(b) **Utility Connections.** Any work performed by or on behalf of a Party to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, fire service line, gas line, telephone conduit or any other public utility service shall be performed without interference with the provision of such services to each other Party and the Occupants of their Parcels, unless such interference is made unavoidable by emergency repairs or as a result of a casualty, in which even the Party performing the work shall use good faith efforts to give prior notice to each other Party of such interference, or if prior notice is not possible, to give such notice as soon as possible after the occurrence of the event giving rise to such interference and otherwise use due diligence to take all measures available to prevent interference with such services or the disruption of the orderly conduct of the business of the other Parties, and any Occupants of their Parcels. Any work of installation, alteration, replacement or repair of utility installations shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all Users to the various business establishments in the Property.

(c) **Compliance with Laws.** All construction work undertaken by any Party pursuant to this Agreement shall comply with the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction, and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, zoning laws and building codes. Each Party shall also secure all licenses and permits from governmental agencies, public bodies and other entities (such as public utilities) necessary for any construction undertaken by it.

(d) **Intentionally Omitted.**

(e) **Emergency Work.** Notwithstanding any other notice provision contained in this Section 5.3, in the event of emergency conditions, any Party may undertake the necessary construction work to remedy the emergency condition, provided that the Party undertaking such work does so in good faith, gives notice thereof to the other Parties upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable conditions of this Section 5.3.

(f) **Fencing Off Construction.** Each Party, at its own cost and expense, shall fence off or cause to be fenced off, any development, construction, repair, alteration or remodeling work performed by or under the Party on any Parcel, if fencing is necessary or appropriate to ensure the safety of Users of the Common Area or in order to prevent interference with the operation of a Party's business or such Party's rights of use in the Common Area under this Agreement. Fencing shall be of such height and of a construction sufficient to protect existing facilities in the Property from dust, debris and other

inconveniences occasioned by such work, and to protect Users from safety hazards resulting from such work, and shall be constructed of materials in keeping with the character of existing Property facilities.

(g) **Common Area Encroachments.** In connection with work of construction performed within Building Areas, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder so long as: (i) their use is kept within reasonable requirements of permitted construction work expeditiously pursued, and (ii) they do not unduly interfere with the use and enjoyment of the easements granted under Article 2 above, or access, ingress and egress to and from the Building Areas and the Common Area and adjoining public streets, or the circulation of vehicles or pedestrians within the Common Area or between Building Areas and the Common Area or adjoining public streets.

(h) **Use of Common Area.** Common Area may be used: (i) for ingress and egress of vehicles transporting construction materials and equipment and Persons employed in connection with any work provided for herein, and (ii) staging areas for temporary storage of materials and vehicles being used in connection with such construction, subject to all of the other terms of this Agreement. The location for ingress and egress and staging areas under the foregoing clauses (i) and (ii) shall be subject to approval of the Approving Parties prior to commencement of construction if such ingress and egress and staging areas are located off the Parcel under construction.

**5.4 Indemnification By Parties.** Each Party shall Indemnify each other Party from any and all Claims arising by reason of injury to or death of persons, damage to property of Persons or liens for work or labor performed, materials or supplies furnished arising out of or in connection with use by the indemnifying Party of the easements granted hereunder or otherwise supplied or obtained for the benefit of such Party's Parcel, the exercise by such Party of the rights granted to it in this Agreement, or the performance by such Party of its obligations under this Agreement. Any Party may contest any lien or claim of lien asserted against such Party, or the Parcel affected by such Party's use of any of the easements or rights granted hereunder, or the exercise by such Party of the rights granted to it in this Agreement; provided, however, that such Party shall pay and fully discharge any such claim of lien within five (5) days after entry of final judgment adverse to such Party in any action to enforce or foreclose the same. For purposes of this Section 5.4, a judgment shall be deemed final when it can be enforced by execution or judicial sale, and no such judgment shall be considered final for the purposes hereof during the pendency of a stay of execution in connection with an appeal. If a Party contests a claim of lien, then upon the written request of any other Party, the contesting Party shall promptly take one or more of the following actions as shall be required to induce a title insurance company insuring the requesting Party's Parcel chosen by such Party to issue its policy of title insurance not showing the lien claim as an exception to title to the affected Parcel: (i) record a bond of a responsible corporate surety of such kind and in such amount as may be required to release the lien from the affected Parcel, (ii) post security in the amount of the Claim, plus estimated costs and interests, or (iii) provide such indemnities as such title insurance company may require.

## **6. Common Area Maintenance and Operation.**

**6.1 Operation and Maintenance of Common Area.** Subject to and in accordance with this Article 6, Developer shall operate and maintain, as common expense, the Common Area. The Common Area shall be operated and maintained by Developer in a first-class manner and condition. All Common Area improvements repaired or replaced by Developer or a Party pursuant to the requirements of this Article 6 shall be repaired or replaced with materials, apparatus and facilities equal or better in quality and design to the materials, apparatus or facilities repaired or replaced and so as to maintain the architectural and aesthetic harmony and integration of the Property as a whole. The obligation of Developer to maintain and operate the Common Area shall include, but not be limited to, the following:

(a) **Paved Areas.** Maintaining all paved surfaces and curbs of the Common Area in a smooth and evenly covered condition, which maintenance work shall include, without limitation, restriping, repairing and resurfacing of the Parking Area, Access Roads and curbs, using surface material of a quality equal or superior to the original surfacing material.

(b) **Debris and Refuse.** Removal of all papers, debris, filth, and refuse, and sweeping the Common Area to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that each Party shall install, operate and properly maintain, or cause to be so installed, operated and maintained, on its Parcel, without cost or expense to any other Party and so as not to be visible to the general public visiting at the Property, sufficient trash compactors, bailers and enclosed trash bins, for use in connection with storage of all trash, refuse and waste materials of the Occupants of such Party's Parcel, and each Party shall take, or cause to be taken, all necessary measures to keep the Parcels free from all debris and rubbish caused by or emanating from such facilities. All sweeping shall be at appropriate intervals during such times as shall least interfere with the conduct of the business of any Occupant, or the use by such Occupant, its invitees, licensees, customers, agents and employees of the Common Area, pursuant to the rights granted under this Agreement.

(c) **Signs and Markers.** Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines.

(d) **Parking Area Lighting.** Operating, keeping in repair, cleaning and replacing when necessary such Common Area lighting facilities as may be reasonably required.

(e) **Landscaped Areas.** Cleaning and maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of buildings, repairing automatic sprinkler systems or water lines in the Common Area, weeding, pruning, fertilizing or making replacement of shrubs and other landscaping as necessary.

(f) **Utilities.** Maintaining, cleaning and repairing any and all utility lines, systems and services located in the Common Area which are necessary for the operation of the Common Area and the Building Areas or located outside of the Building Area, and any buildings and improvements located in the Common Area.

(g) **Obstructions.** Keeping the Common Area free from obstructions not permitted hereunder.

(h) **Rest Areas.** Maintaining and keeping in sanitary condition public restrooms, if any, and other common use facilities.

(i) **Sidewalks.** Cleaning (including washing and/or steam cleaning), maintenance and repair of all sidewalks, including perimeter sidewalks adjacent and contiguous to buildings located on Building Areas. Sidewalks shall be cleaned at appropriate intervals during such times as shall least interfere with the conduct of the business of any Occupant, or the use by such Occupant, its invitees, licensees, customers, agents and employees, of the Common Area pursuant to the rights granted under this Agreement.

(j) **Governmental Requirements.** Complying with all applicable requirements of governmental authorities pertaining to the Common Area, including, without limitation, any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about the Common Area under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to the Common Area.

(k) **Traffic.** Regulating of traffic at entrances and exits to the Property as conditions reasonably require to maintain orderly and proper traffic flow and ingress and egress to the Property.

(l) **Rules and Regulations.** Enforcement of the Rules and Regulations established pursuant to Section 4.5.

**6.2 Personnel.** Provision of security and other personnel within the Common Area as may be required for a Party to perform its obligations hereunder.

**6.3 Damage or Destruction To Common Area.** In the event of any casualty (which shall include acts of God, fire, earthquake, explosion or similar occurrences) which results in damage or destruction to the Common Area during the term of this Agreement, whether insured or uninsured, each Party shall at its sole cost and expense restore, repair or rebuild or cause the restoration, repair and rebuilding of the Common Area on such Party's Parcel with all due diligence. Any such Common Area required to be restored and repaired shall be repaired or restored to a condition equal to or better than the condition existing prior to the event of damage or destruction, to the same general appearance as existed immediately prior to such damage or destruction (unless otherwise approved by Developer pursuant to Article 4) and in accordance with applicable standards of this Agreement for the integrated Property pursuant to a uniform general plan. Unless such work is carried out pursuant to the original plans and specifications for the Common Area approved in writing by Developer, any plans or specifications for such work of repair and restoration shall be subject to the prior written approval of Developer pursuant to the standards and procedures of Article 4. Each Party shall undertake such work in a manner which will cause as little disruption of and interference with the use of the remainder of the Common Area and Building Areas as is reasonably possible in accordance with the applicable requirements of this Agreement. Each Party shall use all due diligence to complete restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use and operation as part of the Property with as little delay and as little disruption as circumstances will permit.

**6.4 Common Area Maintenance and Payment of Associated Charges.**

(a) Developer shall have full legal responsibility to pay when due and shall enter into all necessary contracts necessary for all reasonable expenses attributable to the Common Area, including maintenance, repair and operating costs (which shall include by way of example and not by way of limitation, electrical charges for lighting, landscape maintenance, mowing and trimming, sprinkler system repairs, conditioning, winterizing, snow removal, clean-up and sweeping charges, asphalt patching, concrete repair and maintenance, including any subsequent sealing or coating services, striping for parking stalls, repair and upkeep of pylon sign, liability and casualty insurance premium costs, etc.) ("Common Area Expenses"). The Common Area Expenses shall be subject to reimbursement by each Parcel Owner in accordance with Section 6.4(b) below.

(b) To reimburse Developer for the Common Area Expenses, each Parcel Owner shall reimburse Developer for its pro rata share of the reasonable costs incurred in connection therewith, plus an administrative fee equal to twelve percent (12%) of such costs to defray administrative expenses, within thirty (30) days after receipt of an invoice therefor. The percentage allocation of the costs of the Common Area maintenance among all Parcel Owners shall be the actual expenses incurred by Developer in maintaining the Common Areas located on the Property multiplied by a number which is the product of a percentage equal to the ratio that the land area within each Parcel bears to the total land area of all Parcels.

(c) If a Parcel Owner defaults in payment of reimbursements as outlined in Section 6.4(b) above, the Developer shall give defaulting Parcel Owner written notice of the claimed default, and defaulting Parcel Owner shall have ten (10) days following the receipt of such written notice to cure such default. If the default remains uncured following the ten (10) day period, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full.

(d) Additionally, in the event that defaulting Parcel Owner's failure to pay a bill continues beyond sixty (60) days after it is due, then the Developer shall be entitled to record a Notice of Lien against the defaulting Developer's Property in the total amount due and owing. Said Notice of Lien may be foreclosed by suit, power of sale or in any other manner permitted by applicable law including, without limitation, power of sale foreclosure. Notwithstanding the foregoing, if the defaulting Parcel Owner gives written notice, prior to the expiration of such sixty (60) day period, that it is contesting the amount or payment of the bill in question, and provided that the defaulting Parcel Owner also either posts a

bond in favor of the Developer or pays into escrow the amount being contested pending resolution, then the Developer shall not be entitled to record a Notice of Lien against the defaulting Parcel Owner's Property.

(e) **Failure to Maintain the Common Areas and Easements.** If Developer defaults under its regular maintenance, repair and replacement obligations as described in Section 6.1 above, the other Parcel Owner(s) shall give defaulting Developer written notice of the claimed default, and defaulting Developer shall have ten (10) days following the receipt of such written notice to cure such default. If the default remains uncured following the ten (10) day period, or if such default is not curable within the ten (10) day period and the defaulting Developer has failed to begin to cure such default within the ten (10) day period, the other Parcel Owner(s) may, but shall not be required to, cure the default itself, and then bill the defaulting Developer for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The defaulting Developer shall pay all such bills within thirty (30) days after receipt of the bill. In the event the defaulting Developer fails to timely pay any bill, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full.

(f) **Additionally, in the event that defaulting Developer's failure to pay a bill continues beyond sixty (60) days after it is due, then the Parcel Owner(s) who performed the work to cure the default shall be entitled to record a Notice of Lien against the defaulting Developer's Property in the total amount due and owing. Said Notice of Lien may be foreclosed by suit, power of sale or in any other manner permitted by applicable law including, without limitation, power of sale foreclosure. Notwithstanding the foregoing, if the defaulting Developer gives written notice, prior to the expiration of such sixty (60) day period, that it is contesting the amount or payment of the bill in question, and provided that the defaulting Developer also either posts a bond in favor of the other Parcel Owner(s) or pays into escrow the amount being contested pending resolution, then the Parcel Owner(s) who performed the work to cure the default shall not be entitled to record a Notice of Lien against the defaulting Developer's Property. The defaulting Developer and/or its agents shall be permitted, upon seventy-two (72) hours advance written notice to review the records and supporting documentation for any bill submitted to the defaulting Developer pursuant to this Section 6.4. Such review shall take place at the principal place of business of the Parcel Owner(s) who performed the work to cure the default or, if the defaulting Developer desires, by a review of documents sent by facsimile or mail to the defaulting Developer, unless otherwise mutually agreed.**

## **7. Real and Personal Property Taxes.**

**7.1 Payment of Property Taxes.** Each Party shall pay, or cause to be paid, directly when due, all real property taxes and other special taxes and assessments which may be levied or assessed against its Parcel, and against the buildings and improvements located thereon.

**7.2 Contest of Property Taxes.** Each Party shall have the right to contest in good faith any real property tax or other special tax or assessment levied upon its Parcel or any building or improvement thereon. Developer may contest (or allow to be contested) in good faith any other real property tax or other special tax or assessment levied upon the Property, or any portion thereof, or building or improvement thereon. Any such contested tax or assessment shall be paid, however, prior to the time when the affected portion of the Property can be subjected to sale under any applicable law pursuant to a proceeding which may result in impairment of the rights created hereunder or terminate any provision hereof as applied to any Parcel. Any Party who is not a party to such contest shall execute such documents as may be reasonably necessary to establish or evidence the contesting Party's right to contest any such tax, assessment or charge. The Party making such contest shall indemnify the other Parties against any loss, cost, damage, injury or expense arising out of or relating to the conduct of such contest, but no Party shall be charged with the responsibility as a result of any such contest for any increased taxes allegedly resulting therefrom or as a result thereof. If any Party contests any tax or assessment hereunder, then upon the written request of any of the other Parties, the contesting Party shall, if such tax or assessment, or contest, results in the imposition of any lien or claim of lien against any portion of the Property, or against the Parcel of the requesting Party, promptly take one or more of the following actions as shall be required to induce a title insurance company chosen by the requesting Parties under this Agreement in the other portions of the Property to issue such

title company's policy of title insurance not showing the lien claim as an exception to title to the effected Parcel or interest in the Property: (i) record a bond of a responsible corporate surety of such kind and in such amount as may be required to release the lien from the affected Parcel of interest; (ii) post security in the amount of the claim plus estimated costs and interests; (iii) discharge the contested amount under protest; or (iv) provide such indemnities as such title insurance company may require.

**8. Parking Ratio; Changes in Common Area.**

**8.1 Parking Ratio.** Subject to Article 11 hereof, each Party shall have access at all times in and upon the Parking Area for sufficient vehicular parking on its Parcel to maintain, with respect to all Building Area on such Party's Parcel, such parking ratio as may be required by applicable zoning code or other governmental regulations, without any variance or any special exception.

**8.2 Changes in Common Area.** No Party shall make any of the following changes in the Common Area, without the prior written consent of Developer, which: (i) reduces the Parking Ratio below that called for under Section 8.1, (ii) calls for construction of additional Parking Area from that theretofore approved in writing by Developer, (iii) changes in any manner the parking layout or pattern of traffic flow thereof, or changes the Access Roads, from that theretofore approved in writing by Developer if such changes materially impact the flow of vehicle traffic flow between Parcels, or (iv) makes any other material change in the Common Area configuration from that theretofore approved in writing by Developer.

**9. Indemnification; Insurance; Damage and Destruction.**

**9.1 Indemnity.** Subject to Section 4.4, each Party covenants to Indemnify the other Parties from and against any and all Claims incurred in connection with, arising from, or as a result of the bodily or personal injury or death or property damage to any Person, as shall occur in or about such Party's Parcel.

**9.2 Parties' Liability Insurance.** Each Party shall, during the term of the Agreement, severally maintain in full force and effect comprehensive commercial general liability insurance, including but not limited to, comprehensive property damage insurance and contractual liability insurance, for the Indemnity set forth in Section 9.1, providing coverage for any Claim on its Parcel with a combined single limit of at least Two Million Dollars (\$2,000,000) in 2011 Dollars per occurrence or such other amount as the Parties may from time to time agree upon.

**9.3 Property Insurance.** Each Party shall carry, or cause to be carried, upon all buildings located in the Building Areas upon its Parcel and for all improvements located on its Common Area, "all risk" property insurance written on a replacement cost basis in an amount equal to the full replacement cost (exclusive of the cost of excavation, foundations and footings and without deduction for depreciation), insuring the property for physical loss or damage from perils against risks included within broad form "all risks" property insurance (except loss or damage by earthquake, war or nuclear incidents or other risks typically excluded from "all risks" insurance), and specifically including, but not limited to, at least the following perils: those included within fire and extended coverage, loss or damage by fire, windstorm, lightning, cyclone, tornado, hail, explosion, water damage, riot, riot attending a strike, civil commotion, malicious mischief, collapse of building or roof, subsidence, boiler and machinery, vandalism, aircraft, vehicle and smoke damage and sprinkler leakage.

**9.4 General Obligations on Rebuilding.** Whenever any Party rebuilds, replaces or repairs any Building Area or other improvement damaged or destroyed from any cause whatsoever, the work of such rebuilding, replacement or repair shall be commenced and prosecuted to completion with all due diligence and as soon as reasonably possible after the event of damage or destruction occurs but in no event more than eighteen (18) months after the damage occurred. The work of rebuilding, replacement or repair shall be undertaken by the affected Party in accordance with all the terms of this Agreement, including, without limitation, (i) the concept of an integrated Property (ii) the provisions of Sections 3.2 and 3.4, and Articles 5 and 8.



**9.5 Obligations When Party Does Not Rebuild.** In the event of any damage or destruction to any Building Area or improvements located on any Parcel, which a Party does not repair hereunder, then the affected Party shall raze and demolish such Building Area or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris and comply with the applicable requirements of Section 9.6.

**9.6 Clear Areas.** If during the term of this Agreement there are any Building Areas upon which no building or other improvements exist or have been constructed, the Party occupying each such Building Area shall maintain such Building Area in a safe, neat and attractive condition, free of weeds and debris, and take necessary and appropriate measures to prevent and control the emanation of dust and dirt from such Building Area, which may include use of gravel, grass, ground cover or the sealing of ground surface. If such condition continues for more than one (1) year, the Party occupying such Building Area shall plant ground cover thereon compatible and harmonious with the Property landscaping, and maintain the same until construction of buildings or other improvements on such Building Area is commenced. All costs associated with the requirements of this Section 9.6 shall be borne by the Party occupying the affected Building Area and shall not be included in Common Area.

**9.7 Intentionally Deleted.**

**9.8 Blanket Coverage.** Any policy required to be maintained hereunder by a Party may be maintained under a so-called "blanket policy" insuring other Persons and other locations, so long as the amount of insurance required to be provided hereunder is not thereby diminished.

**9.9 Other Insurance Requirements.** Any policy of insurance required to be carried under this Article 9 by a Party shall provide that such policy may not be cancelled or modified without at least thirty (30) days prior written notice to the other Parties and shall be carried with an insurance company or companies rated B+7 or better by the then Best Key Rating Guide and qualified to insure property in Utah. Each Party shall furnish to the other Parties on or before the effective date of any policy of insurance required to be carried under this Article 9, a certificate thereof stating that such insurance is in full force and effect, that the premiums therefor have been paid, that the other Parties (and any other Person required to be so named) have been designated as named or additional insureds where required, evidencing that the policy contains the required waivers of subrogation and that such insurance may not be cancelled or modified without at least thirty (30) days prior written notice to the other Parties.

**9.10 Mutual Release; Waiver of Subrogation.** Each Party for itself, and on behalf of its insurer, hereby releases and waives any right to recover against any other Party from any liability for any loss or damage to buildings or other improvements in the Property, or the contents thereof, and any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is required to be covered by insurance pursuant to this Article 9 by such Party, or is otherwise insured (or if a Party is self-insured, to the extent any such claim would have been covered by insurance otherwise required to be carried by such Party hereunder), irrespective of any negligence on the part of such other Party which may have contributed to such loss or damage. Each Party shall use its good faith efforts to provide that any lease, license, concession or other agreement entered into between any Party and an Occupant of its Parcel on or after the date of this Agreement shall contain a provision releasing and waiving rights of recovery against the other Parties to the same extent as the release and waiver contained in this Section 9.10 and, if such waiver and release is contained in any such agreement with an Occupant, then the waiver and release by each Party under this Section 9.10 shall extend to and benefit such Occupant. The provisions of this Section 9.10 are intended to restrict each Party and Occupant (as permitted by law) to recovery for loss or damage against insurance carriers to the extent of such coverage or required coverage (or if a Party is self-insured, to the extent any such claim would have been covered by insurance otherwise required to be carried by such Party hereunder) and waive fully, and for the benefit of each other Party and Occupant, any rights and/or claims which might give rise to a right of subrogation. Except for a Party which is self-insured under Section 9.7, each Party shall obtain or cause to be obtained, for the benefit of the other Party, a waiver of the right of subrogation which the insurer of such Party may acquire against any other Party by virtue of the payment of any loss covered by such insurance.

10. **Hazardous Materials.**

10.1 **Certain Definitions.** For purposes hereof, the following terms shall have the following meanings:

(a) **Environmental Laws.** All statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, release, discharge, storage or disposal of Hazardous Materials as they relate to the Property.

(b) **Hazardous Materials.** Petroleum, asbestos, polychlorinated biphenyls, radioactive materials, radon gas or any chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste" or "toxic substances", or words of similar import under any Environmental Laws, including Federal Water Pollution Act, as amended (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) and the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.) Sections 25115, 25117, 25122.7, 25140, 25249.8, 25281.

(c) **Regulation of Use.** No Party shall use, or allow use of, Hazardous Materials on, about, under or in its Parcel, or the Property, except as part of the ordinary course of such Party's business in the construction and operation of an office building and retail building. In the event of a release in, about, under or on the Property, or any portion thereof, of any Hazardous Materials, the Party responsible therefor shall immediately take such remedial actions as may be necessary to clean up the same as may be required by and in accordance with the requirements of Environmental Law. Each Party, and any Occupant of that Party's Parcel, shall use, handle and store any Hazardous Materials hereunder in accordance with the applicable requirements of Environmental Laws.

11. **Appropriation.**

11.1 **Distribution of Award.** Any award of compensation or damages payable on account of an Appropriation of any Parcel, or a portion thereof, whether the same be obtained by agreement or by judgment, verdict or order in a legal proceeding resulting from an Appropriation of any Parcel, or any portion thereof, shall be distributed in accordance with the terms of the agreement, or judgment, verdict, or order made in the proceedings. In the event of any sale of any Parcel or any portion thereof under threat of Appropriation, such Parcel, or portion thereof, shall for all purposes be deemed to have been subject to an Appropriation, and the net amount of the price received therefor after deduction of the expenses of the sale shall be deemed to constitute an "award" as that term is used herein.

11.2 **Interests Affected.** Nothing contained in this Article 11 shall entitle any Party to share in any award made to any other Party. In the event of the Appropriation of any Parcel, or portion thereof, this Agreement and the terms, covenants, conditions, easements and restrictions herein contained shall terminate only with respect to such Parcel, or portion thereof, so taken upon the taking of possession thereof under such Appropriation.

12. **Rights Upon Default.**

12.1 **Right to Cure.** If any Party defaults in the performance of any of the obligations of this Agreement, and such defaulting Party fails to cure such default within thirty (30) days after written notice given by a non-defaulting Party, unless such default cannot reasonably be cured within such thirty (30) day period, in which event such defaulting Party fails within such thirty (30) day period to commence cure and diligently thereafter prosecute such cure to completion, then the non-defaulting Party shall have the right, but not the obligation, to cure such default for the account of and at the expense of the defaulting Party or Occupant; provide, however, that in the event of emergency conditions posing an immediate threat to Persons or property and constituting a default, the non-defaulting Party acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if

necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the Party giving such notice proposes to take in order to cure the claimed default. To effectuate any such cure, the non-defaulting Party shall have the right to enter upon the Parcel of the defaulting Party (but not any buildings contained within any Building Area of such Parcel) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party.

**12.2 Legal and Equitable Relief.** Each Party shall have the right to prosecute any proceedings at law or in equity against any other Party, or any other Person, violating, attempting to violate, threatening to violate, or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or defaulting Party or any such Person from violating, attempting to violate, threatening to violate or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Section 12.2 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation of default, actions for declaratory relief and actions for specific performance of this Agreement.

**12.3 Costs of Cure.** All costs and expenses reasonably incurred by any Party to cure a default of a defaulting Party under the provisions of Section 12.1, together with interest thereon, at the lower of five percent (5%) above the discount rate charged by the San Francisco Federal Reserve Bank to its member banks, or the maximum rate allowed by applicable usury law, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to any Party by an order of court pursuant to Section 16.13, shall be assessed against and paid by the defaulting or violating Party.

**(a) Waiver and Cumulative.** No waiver by any Party of any default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

**13. Effect of Breach; Mortgagees.**

**13.1 No Termination.** The breach of this Agreement shall not entitle any Party or Person to cancel, rescind or otherwise terminate this Agreement, or any conditions, covenants, easements or restrictions hereunder.

**13.2 Mortgage Protection.** This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Party and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including any Mortgagee) who acquires title to any Parcel, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

**14. Release on Sale of Interest.**

**14.1 Sale or Transfer by Any Party.** Upon the assignment, conveyance, sale or other transfer by any Party of its right, title and interest in its Parcel (or any legally subdivided portion thereof), that Party shall be released from the obligations of this Agreement as a Party with respect to such transferred Parcel (or any legally subdivided portion thereof) arising subsequent to the effective date of

such sale or transfer (other than those obligations arising from any default by such Party in the performance of any provision of this Agreement prior to such sale or transfer, including payment of any amounts which may then be due and owing under this prior to such sale or transfer) provided that such Party shall have given notice to all other Parties of such transfer and delivered the assumption statement required by Section 14.3 concurrently with the filing for record of the instrument effecting the transfer. Notwithstanding the foregoing, a Party's consent to the exercise of any remedies of a Mortgagee of the other Party's Parcel (including, without limitation, such Mortgagee's right to foreclose upon a Mortgage against the Party's Parcel or to take title to the Party's Parcel, in its own name or in the name of its designee, by deed-in-lieu of foreclosure) is not required.

**14.2 Personal Liability of Transferee.** In no event shall any transferee of any Party be personally liable for any default under this Agreement of the transferring Party which occurred prior to the effective date of the transfer of any right, title and interest in the affected Parcel to the transferee; provided, however, that nothing contained in this Section 14.2 shall affect the rights of any Party to invoke any other right or remedy which may be available in equity in order to enforce the provisions of this Agreement against the Parcel of the transferring Party, nor shall this Section 14.2 affect the obligation of such transferee to cure any conditions constituting a default which continue after the transfer has been effected.

**14.3 Assumption Statement.** Concurrently with the transfer of any right, title and interest in any Parcel by any Party so that the transferee becomes a Party pursuant to this Agreement, the transferee shall execute and deliver to the other Parties a written statement in which: (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall assume the obligations of the transferor under this Agreement with respect to the interest it has acquired and shall covenant, for the benefit of the Parties, to perform all obligations hereunder with respect to the interest it has acquired in accordance with the provisions of this Agreement. Failure to deliver such written statement shall not affect the running of any covenants herein with the land as provided by Section 15.1, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement, but such failure shall constitute a default by the transferee hereunder, and shall preclude release of the transferor as specified in Section 14.1.

**15. Covenants.**

**15.1 Covenants Run With the Land.** All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon the Parties, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other Persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties, and their respective heirs, successors (by merger, consolidation or otherwise) and assigns as Parties determined under this Agreement. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel, and (iii) shall be binding upon each Party and each successive owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any owner of any Parcel, or any portion thereof, and shall benefit each Party and its Parcel and each other Person becoming a Party and its interest in its Parcel.

**15.2 Recordation.** This Agreement shall become effective and binding upon the Parties in accordance with the provisions of this Article 15 upon recordation of this Agreement in the office of the County Recorder of Salt Lake, Utah. Recordation shall be effected by Developer.

**16. Miscellaneous.**

**16.1 Negation of Partnership; No Third Party Beneficiary Rights.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of

any joint enterprise. This Agreement is not intended nor shall it be constructed to create any third party beneficiary rights in any Person who is not a Party, unless expressly otherwise provided.

**16.2 Termination and Amendment.**

(a) **Amendment.** Except as otherwise specified in this Agreement, this Agreement may be cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by the Approving Parties. If an Approving Party has a Mortgage which requires the Mortgagee's consent to any amendment of this Agreement and such Mortgagee has given notice of the existence of such Mortgage to the other Approving Party to this Agreement in accordance with Section 16.9 hereof, the consent, in writing, of such Mortgagee to any proposed amendment, which consent shall not be unreasonably withheld, conditioned or delayed must be obtained in order for such amendment to be enforceable against or binding upon such Mortgagee. Nothing herein contained shall constitute an agreement by any Approving Party that this Agreement cannot be amended without the prior approval of another Approving Party's Mortgagee.

(b) **Term of Agreement.** Notwithstanding any other provision of this Agreement to the contrary and unless previously terminated in its entirety or as to a Party's Parcel, all the provisions hereof (other than certain easements as set forth in Article 3, which shall terminate as therein provided) shall terminate upon the 99<sup>th</sup> anniversary date of the recordation of this Agreement.

**16.3 Approvals.** Unless otherwise herein provided, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of any Party pursuant to this Agreement (or any Exhibit hereto), such approval shall not be unreasonably withheld. Unless provision is made for a specific time period, approval shall be deemed given within thirty (30) days after receipt of the written request for approval, and if a Party shall neither approve nor disapprove within such thirty (30) day period, or other time period as may be specified in this Agreement or Exhibit hereto for approval, that Party shall then be deemed to have given its approval. Whenever under this Agreement approval may not be unreasonably withheld, and a Party shall disapprove, the reasons therefor shall be stated by such Party in reasonable detail in writing. Approval by a Party to or of any act or request by any other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

**16.4 First-Class.** The term "first-class" when used in this Agreement in connection with the development, maintenance, operation or condition of the Property, or any portion thereof, shall refer to a comparative standard of quality judged in accordance with other similar well maintained office buildings and retail buildings within the same geographical location as the Property.

**16.5 Not A Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property, or of any Parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private office building and retail building on private property solely for the benefit of the Parties. Pursuant to the provisions of this Section 16.5, and notwithstanding any other provision to the contrary herein contained, any Party shall have the right to prevent or prohibit the use of its Parcel, or any portion thereof, including Common Area and buildings and improvements located thereon, by any Person, including Users, for any purpose inimical to the operation of an integrated first-class private office building and retail building for retail and commercial purposes as contemplated by this Agreement. The Parties, by appropriate rules and regulations adopted pursuant to Section 4.5, shall have the right to prohibit and regulate any use of the Property by any Person, including Users, for any purpose which is inimical to such operation of an integrated first-class office building and retail building.

**16.6 Excusable Delays.** If any performance required of a Party hereunder is delayed at any time by acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, or damage to work in progress by reason of fire or other casualty, or other cause beyond the reasonable control of a Party (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused.

**16.7 Severability.** Invalidation of any of the provisions in this Agreement, or of the application thereof to any Person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

**16.8 Exhibits.** The Exhibits listed in the Table of Contents to which reference is made herein are deemed incorporated into this Agreement in their entirety by reference thereto.

**16.9 Notices.**

**(a) Procedure.** Any notice to any Party given under this Agreement shall be in writing and given by delivering the same to such Party in person, by overnight courier or express service, or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to such Party. The address of each Party for the giving of notices hereunder (whether by mail or personal delivery) is, until changed as hereinafter provided, the following:

LIGHTHOUSE PINNACLE, LLC  
Attn: John Legge  
11925 South 700 East  
Draper, UT 84070

Any Party may change its notice address at any time by giving written notice of such change to the other Parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected at the address for such Party as herein specified or, if mailed, on the delivery date or attempted delivery date at such Party's address hereunder as shown on the return receipt.

**(b) Form and Effect of Notice.** Every notice (other than the giving or withholding of consent, approval or satisfaction under this Agreement, but including requests therefor) given to a Party or other Person shall comply with the following requirements. Each such notice shall state: (i) the Article, Section or Exhibit (or provision or Paragraph thereof) of this Agreement pursuant to which the notice is given; (ii) the period of time within which the recipient of the notice must respond, or if no response is required, a statement to that effect; and (iii) if applicable, that the failure to respond to the notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall notice be deemed given nor shall a Party's approval of, consent to, or satisfaction with, the subject matter of a notice be deemed given by such Party's failure to object or respond thereto if such notice did not fully comply with the requirements of this Section 16.9, unless such notice failed to comply with the requirements of clause (ii) above, in which event the time for response shall be deemed to be thirty (30) days pursuant to Section 16.3 (unless a longer time period is provided under this Agreement, in which event such longer period shall govern) and upon failure of a Party to respond to the notice within such time period shall be deemed to have been approved under Section 16.3. No waiver of this Section 16.9(b) shall be inferred or implied from any act (including conditional approvals, if any) of a Party, unless such waiver shall be in writing, specifying the nature and extent of the waiver.

**(c) Mortgage Notice and Right to Cure.** The Mortgagee under the Mortgage encumbering the Parcel of a Party shall be entitled to receive a copy of any notice of any default by the Party upon whose Parcel it has a Mortgage, provided that such Mortgagee shall have delivered a copy of a notice in the manner provided in Section 16.9(a) and in the form hereinafter contained to each Party. The form of such notice shall be as follows:

The undersigned, whose address is \_\_\_\_\_, does hereby certify that it is the Mortgagee, as defined in Section 1.10 of that certain

Declaration of Covenants, Conditions, Restrictions and Reciprocal Easement recorded as of \_\_\_\_\_ in \_\_\_\_\_, official records of Salt Lake County, Utah, of the parcel of land described in Exhibit "A" attached hereto and made a part hereof and being the Parcel of (Party) in Draper, Utah. In the event that any notice shall be given of the default of the Party upon whose Parcel the Mortgage held by the undersigned applies, a copy thereof shall be delivered to the undersigned who shall have all rights of such Party to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Party, but shall make the same invalid as it respects the Mortgage of the undersigned.

Any such notice to a Mortgagee shall be given in the same manner as provided in Section 16.9(a) hereof. The giving of any notice of default or the failure to deliver a copy to the defaulting Party's Mortgagee shall not create any liability on the part of the Party so declaring a default. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Party so declaring a default. If any notice shall be given of the default of a Party and such defaulting Party has failed to cure or commence to cure such default as provided in this Agreement, then any such Mortgagee, which has given notice as above provided, under any Mortgage affecting the Parcel of the defaulting Party shall be entitled to receive an additional notice given in the manner provided in Section 16.9 hereof that the defaulting Party has failed to cure such default and such Mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and diligently pursue such cure to completion within a reasonable time thereafter. Giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Party so declaring a default.

**16.10 Entire Agreement.** This written Agreement and the Exhibits hereto and any Separate Agreement(s) of the Parties contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and Exhibits hereto.

**16.11 Interpretation; Captions.** The captions preceding the text of each Article, Section, subsection and the Table of Contents hereof and Paragraphs of Exhibits, are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

**16.12 References.** All references herein to a given Article, Section, subsection or Exhibit refer to the Article, Section, subsection or Exhibit of this Agreement.

**16.13 Litigation Expenses.**

(a) **Payment to Prevailing Party.** If any Party shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Party by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement or interpretation of any provision of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

(b) **Attorneys' Fees in Third Party Litigation.** If any Party is required to defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim) because of any other Party's breach of this Agreement and such Party is the prevailing party in such action or proceeding, then such Party shall be entitled to reasonable attorneys' fees from such other Party.

**16.14 Signature Pages.** For convenience, the signatures of each of the Parties may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

**16.15 Time.** Time is of the essence of this Agreement and each and every provision hereof.

**16.16 Index Adjustment.** As used in this Agreement, the term "in 2010 Dollars" shall mean and refer to the amount as proportionately increased or decreased for each year during the term of this Agreement in the Implicit Price Deflator of the Gross National Product of the United States, issued and published by the United States Department of Commerce (1972=100) (the "Index"), or any successor index thereto, appropriately adjusted. In the event that the Index is converted to a different standard reference base or otherwise revised, the determination of the adjustment to be made with reference to the Index shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Department of Commerce or, if said Department shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or other nationally recognized publisher of similar statistical information as may be agreed upon by the Parties. If the Index ceases to be published, and there is no successor thereto, then a reasonable substitute index selected by the Approving Parties shall be utilized; or, if such a substitute index is not available or may not lawfully be used for the purposes stated herein, then based upon a reliable governmental or other nonpartisan publication, selected by the Approving Parties, evaluating changes in the cost of living or purchasing power of the consumer dollar, if such a publication is available and may be lawfully used for the purposes stated herein. For the purposes of calculating fluctuations in the Index, the calendar year of the date of this Agreement shall be considered to be the base year (the "Base Year"). With respect to any amount referred to in this Agreement to which the Index Adjustment is to be made, such amount shall for the purpose of calculating such adjustment be referred to in this Section 16.16 as the "Base Amount" and the Base Amount, as adjusted by the application of this Section 16.16 shall be referred to herein as the "Adjusted Amount".

The Adjusted Amount shall be determined as follows:

With respect to each time at which the Index Adjustment is to be made, the Base Amount shall be increased or decreased to equal the product obtained by multiplying the Base Amount by a fraction, the numerator of which is the average annual Index for the most recent complete calendar year, and the denominator of which is the average annual Index for the Base Year.

For purposes of this Section 16.16, the Base Amount utilized for any initial calculation made hereunder shall continue to be utilized as the Base Amount for each subsequent application of this provision.

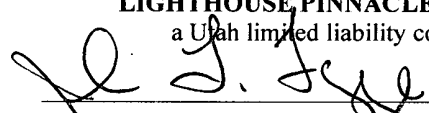
**16.17 Estoppel Certificate.** Each Party severally covenants that upon written request of any other Party, it will issue to such other Party, or to any Mortgage, or any other Person specified by such requesting Party, an estoppel certificate stating to the best of its knowledge: (i) whether the Party or signatory to whom the request has been directed knows of any default under this Agreement and any Separate Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether this Agreement or any Separate Agreement have been assigned, modified or amended in any way (and if it has, then stating the nature thereof) and that this Agreement and any Separate Agreement represent the entire agreement between such Parties; and (iii) that this Agreement, any Separate Agreement and any other agreement specifically identified as of that date are in full force and effect. A Party delivering such certificate shall not have any liability to any other Person arising out of any inaccuracy or omission of information in or from such certificate, but such Party shall be estopped from taking a position against the Party to whom such certificate was delivered which is inconsistent with the statement made in the certificate.

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

LIGHTHOUSE PINNACLE, LLC,  
a Utah limited liability company

By

Its:

  
\_\_\_\_\_  
Manager



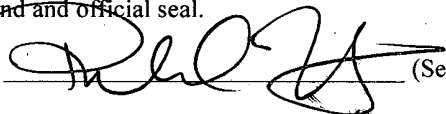
STATE OF UTAH )

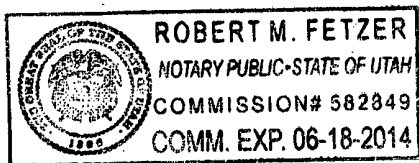
COUNTY OF SALT LAKE )

On Nov 20, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared John Egge, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

 (Seal)

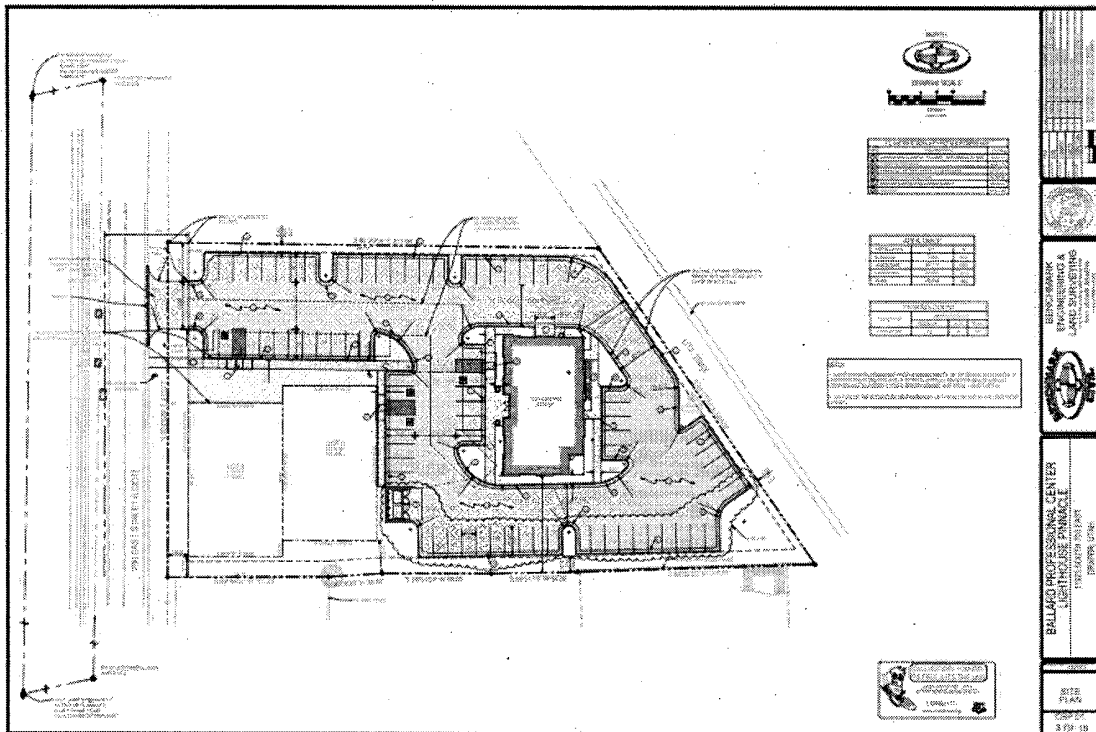


**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lots 1, 2 and 3 of the BALLARD PROFESSIONAL CENTER SUBDIVISION as recorded in the Salt Lake County Recorders Office as Entry No. 11645327, Book 2013P, Page 90.

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. National Title Agency, LLC hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

**EXHIBIT "B"  
SITE PLAN**



**EXHIBIT "C"**  
**PROHIBITED USES**

1.1. Use Restrictions

Each of the following uses are prohibited on the Property:

- 1.1 a (i) pornographic bookstore, (ii) pornographic cinema, (iii) pornographic video store, (iv) pornographic massage parlor, (v) pornographic modeling studio or (vi) pornographic tanning salon or any other business which would tend to injure the family-oriented reputation of the Property;
- 1.2 topless/bottomless nightclub or restaurant or similar venue for adult entertainment;
- 1.3 auction, going out of business, fire or bankruptcy sales or similar merchandise liquidators (except pursuant to a court order);
- 1.4 army-navy surplus store, second-hand store, or salvage or "odd-lot" store;
- 1.5 Roller skating rink;
- 1.6 Video arcade, pool or gaming hall;
- 1.7 Nightclub, bar or dance hall;
- 1.8 Flea market, swap meet or similar enterprise;
- 1.9 Manufacturing or processing plant;
- 1.10 Pawn shop;
- 1.11 Bowling alley;
- 1.12 Cinema or theater;
- 1.13 Sports, health or fitness club in excess of 2,500 square feet;
- 1.14 Bingo parlor, Off-track betting parlor;
- 1.15 Funeral home or mortuary;
- 1.16 Any use that is inconsistent with a family-oriented, first class office building and retail building, including, without limitation, any obnoxious smell or odor, any odor caused by other tenants in the Property that permeates the Demised Premises and any use of any medium that might constitute a nuisance such as loud speakers, sound amplifiers, phonographs, radios, televisions or any other sound producing device which will carry sound outside of the premises;.

Enumeration of the foregoing prohibited uses is not intended to define or qualify the restrictions contained in the Agreement; the Parties acknowledging that many of the uses set forth above would nonetheless be prohibited by the Agreement regardless of whether enumerated herein.