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**MASTER DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BAK COMMERCIAL/RETAIL DEVELOPMENTS.
LEHI CITY, UTAH COUNTY, STATE OF UTAH**

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAK BUSINESS, COMMERCIAL, AND RETAIL DEVELOPMENTS (hereinafter the "Declaration") is made this ___ day of _____, 2001, by **AK HOLDING COMPANY, L.C.**, a Utah limited liability company, **BUSH PROPERTIES, L.C.**, a Utah limited liability company, **THANKSGIVING POINT DEVELOPMENT COMPANY, L.C.**, a Utah limited liability company, **THANKSGIVING POINT BUILDING THREE, L.C.**, a Utah limited liability company, **POINT DEVELOPMENT, L.C.**, a Utah limited liability company, and **WHISTLE STOP DEVELOPMENT CORP.**, a Utah Corporation, (collectively hereinafter "Declarant").

RECITALS:

A. Declarant is the owners of fee simple title to that certain real property situated in Lehi City, Utah County, State of Utah, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property"). This Declaration is being imposed by Declarant upon the Property.

B. Declarant desires to create within and upon the Property a high quality business, commercial, and retail complex in an attractive park-like setting. In order to do so, Declarant desires to establish master protective covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the business environment within the Thanksgiving Point Development.

C. To provide efficient management for the developments on the Property and to preserve their value, desirability and attractiveness, Declarant has incorporated a Utah nonprofit corporation called BAK Commercial, and Retail Development Owners Association and Declarant has delegated and assigned to such Association the powers of managing BAK Commercial and Retail Development Owners Association, of maintaining and administering the Common Facilities, of administering and enforcing all covenants, conditions and restrictions, of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to and of performing such other acts as shall generally benefit the developments on the

Property.

D. Declarant will hereafter hold and convey title to all of the Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of their interest as the same may from time to time appear in the Property shall be held and conveyed subject to the following covenants, conditions restrictions and easements which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, their successors and assigns.

ARTICLE 1 DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

- 1.1 “Architectural Committee” shall mean the committee provided for in Article 6 hereof.
- 1.2 “Articles” and “Bylaws” shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board’s selection, the Board’s general powers, the method of calling a meeting of Members of the Association and the Members required to constitute a quorum for the transaction of business.
- 1.3 “Assessments” shall include each and all of the Assessments hereinafter defined:
- (a) “Capital Improvement Assessment” shall mean a charge against each Owner and such Owner’s Lot representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Facilities, which the Association may from time to time authorize pursuant to the provisions of this Declaration.
- (b) “Reconstruction Assessment” shall mean a charge against each Owner and such Owner’s Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Facilities pursuant to the provisions of this Declaration.
- (c) “Regular Assessment” shall mean a charge against each Owner and such Owner’s Lot representing a portion of the cost to the Association for Common Expenses.
- (d) “Special Assessment” shall mean a charge against a particular Owner and such Owner’s Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and such Owner’s Lot into compliance with the

provisions of this Declaration, the Articles, Bylaws, or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or the Association Rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

- 1.4 "Association" shall mean the BAK Commercial, and Retail Development Owners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.
- 1.5 "Association Rules" shall mean the rules adopted from time to time by the Association pursuant to Article 8 hereof.
- 1.6 "Building" shall mean any structure, which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.
- 1.7 "Board" shall mean the Board of Trustees of the Association.
- 1.8 "City" shall mean the City of Lehi, Utah, a municipal corporation of the State of Utah.
- 1.9 "Common Areas" shall mean all parts of each Lot which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas.
- 1.10 "Common Expense" shall mean the actual and estimated costs of:
- (a) maintenance, management, operation, repair, and replacement of the Common Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association as provided in this Declaration or pursuant to agreement with the City, or any other city, or other governmental agency or authority;
 - (b) unpaid Special, Reconstruction and Capital Improvement Assessment;
 - (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
 - (d) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Lots to the extent services are paid by the Association;
 - (e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Facilities;
 - (f) the costs of any other insurance obtained by the Association;
 - (g) reasonable reserves as deemed appropriate by the Board;

- (h) the costs of bonding the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Facilities or portions thereof;
- (k) Costs incurred by the Architectural Committee or other committees of the Association; and
- (l) the costs of any other item or items approved by the Board and incurred in connection with the Common Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration

1.11 "Common Facilities" shall mean:

- (a) all real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to the Association from time to time for the common use and benefit of the Owners, including, without limitation, streets, landscaped areas, parks, open spaces, paths, trails and slopes; and
- (b) all property rights, improvements, fixtures and personal property owned by or leased to the Association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation, all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street furniture.

The Common Facilities shall be designated in each final subdivision plat recorded by Declarant with regard to the Property and shall be conveyed by Declarant to the Association concurrently with the recording thereof. Declarant shall convey the Common Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

1.12 "Declarant" shall mean AK Holding Company, L.C., a Utah limited liability company, Bush Properties, L.C., a Utah limited liability company, Thanksgiving Point Development Company, L.C., a Utah limited liability company, Thanksgiving Point Building Three, L.C., a Utah limited liability company, Point Development, L.C., a Utah limited liability company, and Whistle Stop Development Corp, a Utah Corporation. Additionally, for purposes of Article 2, Declarant shall also mean such other entities owned exclusively by Alan and/or Karen Ashton,

which were formed for the express purpose of owning real property within the Project.

1.13 "Design Guidelines" shall mean the guidelines prepared by Declarant setting forth certain architectural standards and specifications regarding the location and design of the Improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Property. The Design Guidelines are incorporated in this Declaration by reference. Copies of the Design Guidelines are available at the office of the Association.

1.14 "Environmental Regulations" shall have the meaning set forth in Section 1.18 hereof.

1.15 "Exhibit" shall mean those documents so designated herein and attached hereto and each of such Exhibits is by this reference incorporated into this Declaration.

1.16 "Hazardous Condition" shall have the meaning set forth in Section 5.6(a) hereof.

1.17 "Hazardous Material" means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations" and individually, an "Environmental Regulation"); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term "Environmental Regulations" shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of-any kind.

1.18 "Improvements" shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, of any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.19 "Institutional Mortgagee" shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution specified by the Board.

1.20 "Lot" shall mean any lot or parcel shown on any recorded final subdivision plat filed by

the Owner of such lot or parcel to the extent such lots or parcels are part of the Property and shall also mean the entire balance of all real property which is from time to time subject to this Declaration, excluding, however, dedicated public rights-of-way and Common Facilities. If two or more contiguous Lots are held by the same Owner, such commonly owned Lots may, at the option Owner, be combined and treated as a single Lot for purposes of this Declaration, provided that the construction and location of Improvements thereon shall nevertheless be subject to the review and approval requirements set forth in this Declaration and each Lot shall nevertheless be subject to the specific use restriction more particularly set forth in Article 5. References in this Declaration to a specific Lot shall refer to the particular Lot as set forth in this Declaration and, as applicable, on the recorded final subdivision plat for such Lot.

1.21 “Member” shall mean every individual or entity that qualifies for membership in the Association pursuant to Article 2, including Declarant so long as Declarant qualifies for membership pursuant to said Article.

1.22 “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.23 “Mortgagee” shall mean the mortgagee or beneficiary under any Mortgage. A “First Mortgagee” shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

1.24 “Occupant” shall mean and include the Declarant, the Owners, their respective heirs, successors and assigns (including Mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.25 “Owner” shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including Declarant, and the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.26 “Permittees” shall mean all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.27 “Project” shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon.

1.28 “Property” shall mean the real property described on Exhibit “A” attached hereto and incorporated herein by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property that shall become subject to this Declaration.

1.29 “Set Back” shall mean the distance from the property line of the Lot to the Building or Improvement that is subject to the Set Back requirement provided in this Declaration, the Design Guidelines for the Project, in any recorded final subdivision plat affecting the Project or in the City’s Zoning Ordinance.

1.30 "Supplementary Declaration" shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions, or similar instruments recorded subsequent to this Declaration, which annex portions of additional property.

ARTICLE 2 MEMBERSHIP IN THE ASSOCIATION

2.1 Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership in the association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership in the Association; provided, however, a Member's voting rights or privileges in the Common Facilities, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership in the Association shall exist with respect to ownership of a single Lot.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the transferee or Mortgagee of such Lot. Any attempt to separate the membership in the Association from the Lot to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

2.4 Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each full acre of land plus a one-tenth (1/10) vote for each additional full one-tenth (1/10) acre of land in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, each such person shall be a Member and the vote for such land shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any such land than the number of votes that one person owning the entire interest required for membership would be entitled to cast with respect to such land. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written consent of the co-Owner

designated in a writing executed by all of such co-Owners and delivered to the Association.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each full acre of land plus three-tenths (3/10) votes for each additional full one-tenth (1/10) acre of land in which it holds the interest required for membership; provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A Membership equals or exceeds the total votes outstanding in the Class B Membership; or
- (2) December 31, 2015;

2.5 Approval of Members. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws, or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

ARTICLE 3 COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

3.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Members and to perform the duties and exercise the powers of the Association enumerated in its Articles, Bylaws, and this Declaration.

3.3 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Not

later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Member. Written notice of the annual Regular Assessments shall be sent to every Member. Each Member shall thereafter pay to the Association such Member's Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due.

3.4 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any fiscal year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a described capital improvement upon the Common Facilities to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Article 11 hereof, including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

3.5 Rate of Assessment. All Regular, Reconstruction and Capital Improvement Assessments shall be fixed by the Board at a uniform rate for each full one-tenth of an acre of land within each Lot. All Regular, Reconstruction and Capital Improvement Assessments may be collected at intervals selected by the Board.

3.6 Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

3.7 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein: (i) all properties dedicated to and accepted by, or otherwise acquired by a public authority; and (ii) the Common Facilities. However, no land or improvements devoted to business use shall be exempt from said Assessments.

3.8 Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, or any other charges designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by

individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

3.9 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots within the Property on the first day of the month following the conveyance of the first Lot within the Property by Declarant to an Owner other than Declarant. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.10 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

3.11 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Facilities. All amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE 4 NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge equal to five percent (5%) of the late payment shall be levied and the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum. To the fullest extent permitted by law, the Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 4.2, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement and prosecution of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Member vests in the Association or its assigns, the right and power to bring all actions at law and/or for lien foreclosure against such Member or Members for the collection of such delinquent Assessments.

4.2 Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of

lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder of the County in which the Property is located. Said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, the late charge referred to in Section 4.1, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

4.3 Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association may appoint as the trustee to conduct said deed of trust sale, any person or entity qualified to act as a trustee under the Utah deed of trust statutes. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

4.4 Curing of Default. Upon the timely payment, or other satisfaction, of (a) all delinquent Assessments specified in the notice of claim of lien, (b) all other Assessments which have become due and payable with respect to the Lot as to which such notice or claim of lien was recorded and (c) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

4.5 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale there under shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

ARTICLE 5 USE RESTRICTIONS

5.1 General Use Restrictions. Subject to the provisions of this Article 5, Lots within the Property shall only be used for those uses and categories of uses, from time to time permitted within the Area Plan approved by the City with respect to the Property.

5.2 Uses Specifically Prohibited. Notwithstanding anything to the contrary in Section 5.1, the enumerated uses specified above shall not be construed to include, either as a main or accessory

use, and no Lot or part thereof shall be used for, any of the following uses.

- (a) Terminals, including truck or bus terminals, and other distribution facilities other than a commuter train facility providing passenger service between communities in the State of Utah.
- (b) Food processing operations, except as incidental to permitted restaurant and cafeteria operations.
- (c) Sand, gravel, and other extraction mining.
- (d) Manufacturing and assembly operations, except as otherwise provided.
- (e) Distillation, refining, smelting, agriculture or mining operations.
- (f) Fire sales, flea markets, pawn shops, businesses selling second hand goods, bankruptcy sales (unless pursuant to a court order), or auction operations.
- (g) Automobile, truck, trailer, or recreational vehicle or boat sales, leasing, storage, repair, or display.
- (h) Churches, synagogues, mosques or other places of worship.
- (i) Dry cleaning or laundry plants or facilities other than facilities used solely for the collection of soiled clothing and other fabrics from customers and distribution of clean clothing and other fabrics to customers.
- (j) Industrial or manufacturing uses.
- (k) Repair establishments other than establishments that repair jewelry as part of a jewelry store.
- (l) Junk or salvage yards.
- (m) Liquor stores.
- (n) Cabinet and carpenter shops.
- (o) Plumbing or sheet metal shops.
- (p) Petroleum processing or production.
- (q) Automobile body and fender repair work.
- (r) Night club, pool room, off-track betting facility, casino, card club, bingo parlor, or facility containing gaming equipment.

(s) Establishments (including, without limitation, bookstores) engaged in the business of selling, exhibiting or delivering pornographic or obscene materials (except to the extent that such materials are commonly sold by quality bookstores such as B. Dalton, Barnes & Noble, Brentano's and Waldenbooks).

5.3 Generally Prohibited Uses. Notwithstanding any other provisions of this Declaration, no use or activity shall be established, maintained, conducted or permitted on any portion of the Property which will cause or result in any:

(a) emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of the Lot where created (except to the extent that such fumes or odors are incidental to the normal operation of an upscale restaurant) or which may be detrimental to the health, safety, welfare or comfort of any Owner of any other person, to the condition of any other portion of the Property, or to any vegetation within the Property;

(b) discharge of fluids, gases, solid wastes or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property;

(c) discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Lot upon which the operation is being conducted;

(d) recurrent or continuous emission of sound or noise from any Lot which may be heard without instruments outside the boundaries of the Lot of origination;

(e) recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Lot of origination;

(f) physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area;

(g) persisting unsightly condition on any Lot, which is visible from any street or any other portion of the Property;

(h) excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Lots; or

(i) violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body.

5.4 Outside Storage. No materials, supplies, equipment, finished or unfinished products or articles of any kind shall be stored or permitted to remain on any portion of the Property outside of a Building.

5.5 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Lot and the Property. Incineration of trash, garbage or waste materials on the Property is prohibited.

5.6 Hazardous Materials.

(a) Restriction on Hazardous Materials. Any Hazardous Material brought upon, kept, used, generated, stored, treated, disposed of or released in or about the any Lot, or soils or groundwater of same, by any Owner, of such Lot, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition". In the event any Hazardous Condition occurs on a Lot, the Owner of such Lot shall promptly take all actions at its sole expense as are necessary to correct said violation to the satisfaction of the regulating entity.

(b) Indemnity: If an Owner of a Lot breaches the obligations stated in Section 5.6(a) above or if a Hazardous Condition exists at any time, then the Owner of such Lot shall indemnify, defend and hold the Association, the Owners of each other Lot within the Property and the members, partners, officers, directors, shareholders, employees, and agents of the Association and such other Members harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this Article 5.6 shall survive the termination of this Declaration.

5.7 Storm Drainage. All storm drainage facilities on each Lot shall conform to the requirements of the master storm drainage system which Declarant has developed for the Property and to all applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction. Each Owner shall maintain, repair, replace and keep free of debris and obstruction all drainage systems and facilities located on such Owner's Lot. All parking, driveways and loading areas shall be paved and properly graded to assure proper drainage. The Architectural Committee may require, as part of the drainage plan for any Lot, that parking lots or other areas on a Lot be designed to provide storm water retention as provided in the Design Guidelines and the applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction.

5.8 Excavation. No excavation shall be made except in connection with the construction of

an Improvement, and upon completion thereof any exposed openings shall be backfilled and disturbed ground shall be graded, leveled and landscaped.

5.9 Solar Devices. Solar collectors and other solar energy devices are permitted. All exterior solar energy devices, including, but not limited to, solar panels, collectors and accessories, must be architecturally integrated into the building design, or, if free-standing, must be visually screened from both adjoining Lots and all streets by landscaping or other means acceptable to the Architectural Committee.

5.10 Utility Lines Underground. All utility lines, pipes and conduits within the Property shall be installed underground and no such utility lines, pipes or conduits or supporting apparatus shall be permitted above ground, except to the extent reasonably necessary to support such underground utilities.

5.11 Zoning Variances. No Owner of any Lot within the Property shall seek or obtain a zoning variance or a conditional use permit with regard to such Owner's Lot without the prior written approval of the Architectural Committee, nor shall any Owner request either a rezoning of any portion of the Property or an amendment to the Area Plan approved by the City with respect to the Property without the prior written approval of the Architectural Committee.

5.12 Planning Documents. No subdivision plat or replat of all or any portion of the Property may be submitted to any governmental authorities or recorded unless such plat or replat has first been approved in writing by the Architectural Committee. No request for rezoning and no preliminary or final project plan (as those terms are defined in the City's Zoning Ordinance) may be submitted to any governmental authorities for approval without the prior written approval of the Architectural Committee.

ARTICLE 6 ARCHITECTURAL CONTROL

6.1 Appointment of Architectural Committee. The Project shall have and at all times maintain an Architectural Committee composed of no less than three (3) or more than five (5) individuals who need not be Members. The Alan and/or Karen Ashton shall initially have the right to and do hereby appoint the following (3) individuals to the Architectural Committee: Tom Pugh, Boyd Poulton and Ralph Rasmussen. The Alan and/or Karen Ashton shall retain the right to appoint and remove, augment or replace the members of the Architectural Committee so long as they own at least two (2) acres of land in the Project; provided, however, that Alan and/or Karen Ashton may, at any time and at their sole option transfer this right to the Board by written notice thereof. At such time as Alan and/or Karen Ashton own less than two (2) acres of land within the Project, the right to appoint, remove, augment or replace members of the Architectural Committee shall automatically transfer to the Board.

6.2 Compliance with Design Guidelines. All Improvements, including, without limitation, all Improvements constituting Common Facilities, shall be constructed in strict compliance with the requirements of this Declaration and the Design Guidelines as they exist at the time of approval

of plans, as hereinafter set forth. The Design Guidelines, which are incorporated by reference in this Declaration, are intended as positive statements of design philosophy to be applied throughout the Property. The Design Guidelines regulate, among other things, the following matters:

- (a) Architectural Design:
 - (1) Lot coverage;
 - (2) Material and colors;
 - (3) Identification signage;
 - (4) Exterior lighting; and
 - (5) Mechanical Equipment.

- (b) Site Accessories:
 - (1) Utilities;
 - (2) Street entrances;
 - (3) Parking lots and loading areas;
 - (4) Signage;
 - (5) Security fencing; and
 - (6) Outdoor furniture and furnishings.

- (c) Landscape Design
 - (1) Plant materials;
 - (2) Design principles; and
 - (3) Maintenance guidelines.

- (d) Storm Drainage:
 - (1) Master Plan; and
 - (2) Lot Drainage.

The Architectural Committee shall have the right to modify or supplement the Design Guidelines from time to time in a manner consistent with this Declaration and the overall development of the Property; provided, however, that no modification to the Design Guidelines may result in a provision that contradicts or conflicts with any express provision of this Declaration or is contrary to the general intent or purposes of this Declaration; and provided further, that once plans for an Improvement have been approved, subsequent changes in the Design Guidelines shall not affect such prior approval.

6.3 Approval of Plans Required. No Building or other Improvement shall be erected, placed, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until plans for such Building or other Improvements have been approved in writing by the Architectural Committee. All Building or Improvement plans submitted for approval are

subject to a mandatory forty-five (45) day waiting period beginning at the date of submittal to the Architectural Committee, and said plans shall receive a response from the Architectural Committee not more than sixty (60) days after the date of submittal to the Architectural Committee. The obligation to obtain the Architectural Committee's approval of plans is limited to external features of Buildings and other Improvements, and work which is completely within a Building may be undertaken without such approval. The replacement of minor features of Improvements with substantially identical material or the replacement of plants used in landscaping with comparable plants shall also not require the prior approval of the Architectural Committee. The Architectural Committee shall exercise its judgment to see that all Buildings and other Improvements, including, without limitation, landscaping, within the Property are consistent with this Declaration and the Design Guidelines. The actions of the Architectural Committee, through its written approval or disapproval of plans or other information, or with respect to any other matter, shall be conclusive and binding upon the Owner or other party who submitted the plans or other information for approval. The Architectural Committee shall approve all proposed improvements that comply with the applicable Design Guidelines and this Declaration. All Improvements shall be constructed in accordance with the plans approved by the Architectural Committee.

6.4 Changes in Plans. No material change in any plans or other document required to be approved by the Architectural Committee shall be made unless and until the proposed change is submitted to and approved by the Architectural Committee.

6.5 Submittal and Approval Procedures. An Owner or the Owner's representative shall submit materials as required by the Design Guidelines in connection with the consideration of any plans, submittals or applications for approval of Improvements and shall pay such reasonable architectural review fees as may be established from time to time by the Architectural Committee in the design Guidelines or otherwise. The Architectural Committee's approval or disapproval of submitted plans shall be within the reasonable discretion of the Architectural Committee, but shall be based upon compliance with this Declaration, the factors set forth in the Design Guidelines and the harmony and compatibility of the submitted plans with other Improvements existing or contemplated within the Property. The Architectural Committee shall not arbitrarily withhold any approval. The Architectural Committee's approval of plans shall be evidenced only by the signature of the Architectural Committee upon the plans so approved or by other written instruments signed by the Architectural Committee. The Architectural Committee may approve or disapprove any submittal, or grant approval subject to specified conditions. The Architectural Committee shall, within the time periods provided for in the Design Guidelines, deliver written notice to the party seeking the approval stating that the approval is granted; that approval is granted subject to conditions and specifying the conditions, which must be consistent with this Declaration and the Design Guidelines; or that approval is denied and specifying the reasons for disapproval. Upon disapproval, the party seeking approval may then modify and resubmit the necessary documents for approval. If the Architectural Committee fails either to approve or disapprove submitted documents, whether an initial submittal or resubmittal, within the time periods provided by the Design Guidelines, the Architectural Committee shall be conclusively deemed to have approved such documents; provided, however, that the lack of express approval shall not waive any requirement of this Declaration or the Design Guidelines.

6.6 Construction of Improvements. Upon receipt of approval of plans from the Architectural Committee, the Owner to whom approval is given shall, as soon as reasonably practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of construction or alteration of all approved Improvements. Unless the work is commenced within six (6) months from the date of such approval or the Owner applies for and obtains an extension of such time period from the Architectural Committee prior to the expiration of such time period, such approval shall automatically be revoked. For purposes of this Declaration, construction shall be deemed to have commenced on a Building if a building permit has been obtained and a foundation has been poured for the Building. For any other Improvement, construction shall be deemed to have commenced if required building permits have been obtained and any visible work on the Improvements in question has been started. Except to the extent that non-material modifications are made to such plans, all Improvements shall conform to the plans for such Improvements previously approved by the Architectural Committee. After commencement of construction of any Improvement, the Owner shall diligently pursue the work thereon until completion, subject to reasonable delays for weather, fire, flood, strikes, acts of God and other causes beyond the Owner's control. The Board shall hereby hold and retain the right to request and obtain an injunction for those who are in violation of what the Architectural Committee has agreed. All costs, including attorney fees, associated with an injunction shall be the responsibility of the Owner.

6.7 Installation of Landscaping. All landscaping for a Lot shall be installed, according to the approved plans, as soon as reasonably practicable following substantial completion of the primary Building on the Lot, and in all events within not more than six (6) months following such substantial completion.

6.8 No Engineering Approval. Plans are not approved for engineering design, and by approving such plans neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans.

6.9 Waiver or Variance of Restrictions. To encourage good design, innovation and flexibility, the Architectural Committee may waive or grant a variance of any of the requirements or restrictions contained in the Design Guidelines; in this Article with respect to any Lot, if, in the sole judgment of the Architectural Committee, such waiver or variance would be consistent with the general intent and purposes of this Declaration and would not adversely affect any other Lot or the Property as a whole. Subject always to the provisions of the foregoing sentence, variances may be approved, among other reasons, to correct errors in surveying of lot lines or unintentional mislocation of improvements on a Lot, or where the application of any of the provisions of this Declaration or the Design Guidelines to a particular Lot or any portion thereof would, by reason of unusual circumstances or surroundings, result in undue hardship. Any Owner desiring a waiver or variance shall submit a written request to the Architectural Committee and shall provide all other information and material requested by the Architectural Committee. A waiver or variance may be granted only with the consent of the Architectural Committee and must be evidenced by a written instrument signed by the Architectural Committee. If the Architectural Committee fails to approve or disapprove in writing any request for a waiver or variance within thirty (30) days after receiving all requested information relating to the waiver or variance, the

requested waiver or variances, shall be deemed denied.

ARTICLE 7 GENERAL CONSTRUCTION REQUIREMENTS

7.1 Construction of Improvements on Each Lot. All work performed in the construction, maintenance, repair replacement, alteration or expansion of any Improvement on a Lot shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Lot, or part thereof, to or from any of the Common Facilities, (b) construction work being performed on any other Lot; or (c) the use, enjoyment or occupancy of any other Lot by any Owner, Occupant or Permittee of that Lot. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof; and no such work shall cause any Improvement located on any other Lot to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot shall be done in a good and workmanlike manner and in accordance with good engineering standards.

7.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Lot.

ARTICLE 8 DUTIES AND POWERS OF THE ASSOCIATION

8.1 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) enforce the provisions of this Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation of the Association Rules as provided in the Bylaws and Section 8.2 below, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments;
- (b) acquire, maintain and otherwise manage all of the Common Facilities and all facilities, improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain;

- (c) pay any real and personal property taxes and other charges assessed against the Common Facilities unless the same are separately assessed to the Owners;
- (d) obtain, for the benefit of the Common Facilities, all water, gas and electric, refuse collections and other services;
- (e) grant easements where necessary for utilities and sewer facilities over the Common Facilities to serve the Property as provided in Article 13 below;
- (f) contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;
- (g) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of condominium developments or planned unit developments to perform all or any part of the duties and responsibilities of the Association;
- (h) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- (i) subject to the rights of the Declarant, have the duty to maintain architectural control over the property and appoint the Architectural Committee in connection therewith, pursuant to Article 6 hereof;
- (j) have the power of entry upon any Lot where necessary in connection with construction, maintenance or repair for the benefit of the Common Facilities, or the Owners;
- (k) at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Lots;
- (l) acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Facilities, the administration of the affairs of the Association or for the benefit of the Members;
- (m) at its sole discretion, contract for cable television service for the benefit of the Owners who have subscribed for the service; and
- (n) have the power to establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration, all or any portion of the Common Facilities to said district.

8.2 Association Rules. The Board shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Facilities; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

8.3 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws, provided, however, no such delegation, whether to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE 9 REPAIR AND MAINTENANCE

9.1 Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Facilities or other land within and about the Project in such manner and at such times as the Board shall prescribe:

- (a) maintain the Common Facilities in a clean, safe, attractive, and first-class condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, attractive, and first-class condition at all times;
- (b) repair, restore, replace and make necessary improvements to the Common Facilities;
- (c) maintain all drainage facilities and easements which constitute Common Facilities in accordance with the requirements of any applicable flood control district;
- (d) cause the appropriate public utility to maintain any utility easements located within the Common Facilities;
- (e) maintain all other areas, facilities, equipment, services or aesthetic components of

whatsoever nature as may from time to time be requested by the vote of Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

9.2 Repair and Maintenance by Owner. Every Owner shall:

- (a) maintain such Owner's Lot and all Improvements located therein in a clean, safe, attractive and first-class condition at all times; and
- (b) repair any structural or visible defects or damages to Improvements, keep the exterior of Buildings and other structures on such Owner's Lot in good clean, safe, attractive, and first-class condition and painted as required, keep such Owner's Lot free from weeds, trash and debris, and keep all signs and lighting clean and functional.

9.3 Standards for Maintenance and Construction.

- (a) Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines and, if required by the Design Guidelines, only after approval of the Architectural Committee; and
- (b) Throughout the period of construction upon a Lot, the Owner of such Lot shall keep the Lot and all streets used by construction equipment or trucks in clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt there from, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Lots.

9.4 Right of Association to Maintain and Install. In the event any Owner fails to maintain the exterior of such Owner's Building or Lot or the Improvements thereon, or to install and thereafter maintain landscaping on such Lot in accordance with Section 6.7 hereof, the Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

- (a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its power under this Section 9.4(a) to a duly appointed committee of the Association.
- (b) Such hearing shall be held not less than ten (10) or more than thirty (30) days from the date of said notice.
- (c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any such committee renders a decision against the responsible Owner, it

shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

(e) In the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(1) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished

(2) The date which said, Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(3) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) Unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Lot.

ARTICLE 10 INSURANCE

10.1 Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Facilities with a limit of not less than Two Million Dollars (\$2,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Property, shall specifically name Declarant as an "additional insured," and shall contain a

“severability of interest” endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;

(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the Common Facilities (including all building service equipment and the like), without deduction for depreciation, with an “agreed amount endorsement” or its equivalent and clauses waiving subrogation against Declarant, Members and the Association and persons upon the Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief; windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Property.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of The Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of “employee” or similar expression.

10.2 Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

10.3 Other Insurance: Annual Review. The Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen’s compensation, officers’ and directors’ liability, and errors and omission insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Facilities in light of increased construction costs, inflation, practice in the area in which the Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

10.4 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in Article 11 hereof. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

ARTICLE 11
DESTRUCTION OF IMPROVEMENTS

In the event of partial or total destruction of Improvements upon the Common Facilities, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be insufficient to accomplish such repair or restoration, a Reconstruction Assessment may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event any excess insurance proceeds remain, the Board, shall distribute pro rata such excess funds to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Mortgagee of such Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE 12
EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Facilities, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemn or in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Facilities, the rules as to restoration and replacement of the Common Facilities and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Facilities. In the event of a total taking, the Board shall distribute pro rata any award to the Members. The rights of an Owner and the Mortgagee of such Owner's Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE 13
RIGHTS TO THE COMMON FACILITIES

13.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Facilities, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

(a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Facilities.

(b) The right of the Association subject to the approval rights of Mortgagees pursuant to Article 16 hereof, to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

(c) The right of the Association to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsection 13.1(b) above, all or any portion of the Common Facilities to said district.

13.2 Waiver of Use. No Member may exempt such Member from personal liability for Assessments duly levied by the Association, nor release the Lot owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Common Facilities, or the abandonment of such Member's Lot.

ARTICLE 14 EASEMENTS

14.1 Owners' Rights and Duties: Utilities and Cable Television. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer, water, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Lot served by said lines or facilities a nonexclusive easement to the full extent necessary therefore, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

(b) Wherever sanitary sewer, water, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Lot, the Owner, of each Lot served by said lines or facilities shall be

entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Lot.

(c) The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

14.2 Utilities. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

14.3 Common Area Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner, and the Occupants and Permittees of each Owner:

(a) Nonexclusive easements over, upon, across and between each Lot for the purpose of pedestrian traffic between each Lot and (1) each other Lot which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (3) the Common Facilities; (4) the parking areas now and hereafter located on each Lot; and (5) over and across the Common Areas located on each Lot; limited, however, to those portions of each Lot which are improved by the Owner thereof from time to time pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

(b) Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Lot and (1) the public streets and alleys now and hereafter abutting any portion of the Property; and (2) the Common Facilities; limited, however, to those portions of the Property which are improved by the Owner thereof from time to time for vehicular access ways as such portions may be relocated from time to time by such Owner.

(c) Nonexclusive easements over, upon, across and between the access points and driving lanes from time to time established on each Lot for the purpose of providing ingress, egress, and access to (1) the easements hereby created; (2) the public streets and alleys now and hereafter abutting any portion of the Property; and (3) the Common Facilities.

(d) Nonexclusive easements in and to the parking areas from time to time located on each Lot for access to and use for vehicular parking purposes.

ARTICLE 15
NATURE OF EASEMENTS AND RIGHTS GRANTED

15.1 Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefited by such easements shall constitute the dominate estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

15.2 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Lots;
- (b) Create mutual equitable servitudes upon each Lot in favor of the other Lots;
- (c) Constitute covenants running with the land; and
- (d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

ARTICLE 16
RIGHTS OF LENDERS

16.1 Filing Notice: Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the

failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

16.2 Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

16.3 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale, shall not be obligated to cure any breach of the provisions of this Declaration which occurred before such Mortgagee or transferee acquired title if (a) such breach is noncurable or of a type which is not practical or feasible to cure, and (b) such Mortgagee did not have notice of such breach at the time Mortgagee acquired its lien or security interest in the Lot or Lots. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

16.4 Relationship With Assessments Liens.

(a) The lien provided for in Article 4 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim. The unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Property.

(d) Nothing in this Section shall be construed to release any Owner from such Owner's obligation to pay for any Assessment levied pursuant to this Declaration.

16.5 One Hundred Percent Vote of Institutional Mortgagees. Except upon the prior written approval of at least one hundred percent (100%) of Institutional Mortgagees:

(a) Dissolve the Association or abandon or terminate the maintenance of the Common Facilities by the Association; or

(b) Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of this Article or any other rights granted specifically to the Mortgagees pursuant to any other provision of this Declaration; or

(c) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Facilities shall not require such approval.

16.6 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours; and

(b) Receive the annual audited financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and

(d) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgage, which default has not been cured within sixty (60) days of a request therefore by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees whose written request therefore to the Association specifies the Lot or Lots to which such request relates.

16.7 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

16.8 Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee or such Institutional Mortgagee's representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

16.9 Notice of Destruction or Taking. In the event that any Common Facilities, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such First Mortgagee.

ARTICLE 17 GENERAL PROVISIONS

17.1 Enforcement. Either the Association or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration of any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles, Bylaws, or Association Rules, and any amendments thereto. Failure by the Association, Declarant or by any Member to enforce any covenant condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

17.2 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

17.3 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

17.4 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any

Member, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period often (10) years, unless an instrument, signed by a majority of the then current Members has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

17.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a retail commercial and office park and for the maintenance of the Property and the Common Facilities. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction.

17.6 Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees and/or First Mortgagees pursuant to Article 16 hereof, or otherwise this Declaration may be amended only by the affirmative vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members, and, further, this amendment provision shall not be amended to allow amendments by the vote of less than sixty-six and two-thirds percent (66-2/3 %) of the voting power of the Members; provided, however, any amendment or modification of the Articles 3, 4, 6, and 9 hereof shall require the prior written approval of not less than seventy-five percent (75%) of the Class A Members. An amendment or modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Utah County, Utah

17.7 Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and neuter.

17.8 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

17.9 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

17.10 Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within Utah County, Utah, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-owners, on behalf of all co-Owners and shall be deemed delivery on all such co-owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice.

17.11 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

17.12 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

17.13 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee or any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

17.14 Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease such Owner's Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

17.15 Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant and its successors in interest at any time and from time to time to alter the Common Facilities or the Lots, or to construct such additional Improvements as Declarant and its successors in interest deem advisable prior to completion and sale of the entire Phase in which such Lots or Common

Facilities are located. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Project. Prospective purchasers and Declarant shall have the right to use the Common Facilities for access to the sale facilities of Declarant, and Declarant reserves the right to alter its construction plans and designs as it deems appropriate. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Common Facilities and the Lots.

17.16 Assignability of Declarant's Rights. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's respective interest in the Covered Property, by an express assignment incorporated in a recorded deed or lease, as the case may be, transferring such interest to such successor.

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

DECLARANT:

AK HOLDING COMPANY, L.C., a Utah limited liability company

By: *Markhammerson*

Its: *Manager of Beesmark Investments, Manager*

BUSH PROPERTIES, L.C., a Utah limited liability company

By: *Markhammerson*

Its: *Member*

THANKSGIVING POINT DEVELOPMENT COMPANY, L.C., a Utah limited liability company

By: *Karen Ashton*

Its: *Member*

POINT DEVELOPMENT, L.C., a Utah limited liability company

By: *Markhammerson*

Its: *Manager of Beesmark Investments, Manager*

WHISTLE STOP DEVELOPMENT CORP., a Utah corporation

By: M. W. Thompson

Its: Secretary/Treasurer

THANKSGIVING POINT BUILDING THREE, L.C., a Utah limited liability company

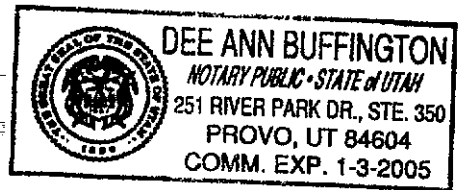
By: Raymond R. Kay

Its: Manager

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Ralph W. Rasmussen as Manager of Beesmark Investments, L.C. which is manager of AK Holding Company, L.C. a Utah limited liability company and Point Development L.C., a Utah limited liability company.

Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

The foregoing instrument was acknowledged before me this day of Sept 25, 2001, by Ralph W. Rasmussen as Member of Bush Properties, L.C., a Utah limited liability company.

Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

The foregoing instrument was acknowledged before me this day of Sept 25, 2001, by Ralph W. Rasmussen as Sec. / Treasurer of Whistle Stop Development Corp., a Utah corporation.

Dee Ann Buffington
Notary Public

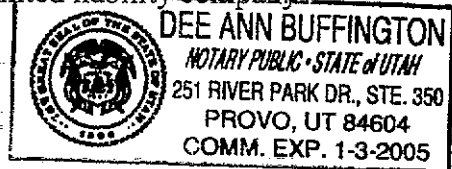


Residing at: Provo, Utah My commission expires: 1-3-2005

STATE OF UTAH)
)ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Karen Ashton as Member of Thanksgiving Point Development Company, L.C., a Utah limited liability company.

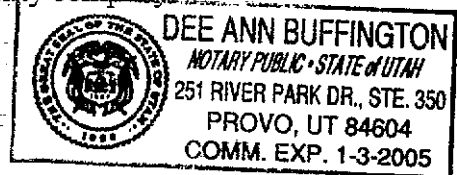
Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

The foregoing instrument was acknowledged before me this day of Sept. 25, 2001, by Gregory Gagon as Manager of Thanksgiving Point Building Three, L.C., a Utah limited liability company.

Dee Ann Buffington
Notary Public



Residing at: Provo, Utah My commission expires: 1-3-2005

Exhibit A

Beginning at intersection of the west line of the I-15 Frontage Road and the south line of Thanksgiving Point Business Park Plat "A" as found and on file at the Utah County Recorders Office, Map No. 8411, said point being South 0°01'17" East 63.82 feet along the section line and South 89°58'43" West 83.23 feet from the East Quarter Corner of Section 36, Township 4 South, Range 1 West, Salt Lake Base and Meridian, and running;

thence Westerly 31.66 feet along the arc of a 20.00 foot radius curve to the right, (center bears South 48°15'59" West and the long chord bears North 87°05'00" West 28.46 feet with a central angle of 90°42'00");

thence South 47°34'00" West 338.42 feet along the southeasterly line of said Executive Parkway;
thence Southwesterly 392.83 feet along the arc of a 530.00 foot radius curve to the left, (center bears North 89°58'00" West and the long chord bears South 68°48'00" West 383.90 feet with a central angle of 42°28'00"); along the south line of said Executive Parkway;

thence North 89°58'00" West 851.74 feet along the south line of said Executive Parkway;
thence Southwesterly 51.10 feet along the arc of a 32.00 foot radius curve to the right, (center bears South 0°02'00" West and the long chord bears South 44°17'01" West 45.84 feet with a central angle of 91°29'59");

thence South 1°27'59" East 513.57 feet along the east line of said Ashton Boulevard;
thence Southerly 280.01 feet along the arc of a 424.00 foot radius curve to the right, (center bears North 88°32'02" East and the long chord bears South 20°23'06" East 274.95 feet with a central angle of 37°50'17"), along the northeast line of said Ashton Boulevard;

thence South 39°18'15" East 1643.66 feet along the Northeast line of said Ashton Boulevard;
thence Southeasterly 507.88 feet along the arc of a 574.00 foot radius curve to the left, (center bears North 50°41'45" East and the long chord bears South 64°39'08" East 491.47 feet with a central angle of 50°41'45") along the north line of said Ashton Boulevard;

thence South 90°00'00" East 617.98 feet along the north line of said Ashton Boulevard;
thence North 0°58'24" West 667.30 feet along the west line of said 2300 West Street;
thence Northeasterly 426.71 feet along the arc of a 765.00 foot radius curve to the left, (center bears North 89°01'36" East and the long chord bears North 15°00'22" East 421.20 feet with a central angle of 31°57'33"), along the northwest line of said 2300 West Street;

thence North 49°35'37" East 460.65 feet along the northwest line of said 2300 West Street;
thence South 41°44'00" East 1702.57 feet along the west line of said I-15 Frontage Road;
thence Southeasterly 292.33 feet along the arc of a 5769.58 foot radius curve to the left, (center bears North 48°16'00" East and the long chord bears South 43°11'05" East 292.30 feet with a central angle of 2°54'11") along the west line of said I-15 Frontage Road;

thence South 44°38'11" East 385.23 feet along the west line of said I-15 Frontage Road;
thence South 00°06'36" East 36.60 feet along the west line of said I-15 Frontage Road;
thence South 89°57'57" East 36.09 feet along the west line of said I-15 Frontage Road;

thence South 44°38'11" East 281.23 feet along the west line of said I-15 Frontage Road;
 thence South 89°57'57" East 14.06 feet along the west line of said I-15 Frontage Road;
 thence South 44°38'11" East 262.61 feet along the west line of said I-15 Frontage Road;
 thence South 21°57'46" West 489.72 feet;
 thence South 00°00'00" West 247.12 feet;
 thence South 0°49'35" West 1.19 feet;
 thence North 89°44'51" West 1993.14 feet;
 thence North 0°58'26" West 546.34 feet;
 thence South 87°27'44" West 193.97 feet;
 thence South 1°47'20" East 9.57 feet;
 thence South 87°33'52" West 463.56 feet;
 thence South 0°10'05" West 3.29 feet;
 thence South 89°10'40" West 196.43 feet to the east line of the Denver & Rio Grande Railway
 right-of-way;
 thence Northwesterly 342.52 feet along the arc of a 7850.00 foot radius curve to the left, (center
 bears North 48°11'45" East and the long chord bears North 40°33'15" West 342.49 feet with a central
 angle of 2°30'00"), along the east line of said Denver & Rio Grande Railway right-of-way;
 thence North 39°18'15" West 5279.14 feet along the east line of said Denver & Rio Grande
 Railway right-of-way;
 thence North 40°05'30" East 1130.20 feet along the north line Thanksgiving Point Business Park
 Plat "A";
 thence North 40°01'45" East 162.73 feet;
 thence North 86°48'47" East 1228.96 feet;
 thence Southeasterly 588.35 feet along the arc of a 2241.83 foot radius curve to the right, (center
 bears South 72°59'26" West and the long chord bears South 9°29'28" East 586.66 feet with a central
 angle of 15°02'13"), along the west line of the I-15 Frontage Road;
 thence South 1°58'21" East 68.14 feet along the west line of said I-15 Frontage Road to the north
 line of Club House Drive as called for in a Quit Claim Deed recorded as Entry No. 20838 on February
 22, 1999, in Book 4983, Page 393 of the Official Records;
 thence South 01°58'21" East 70.02 feet along the west line of said I-15 Frontage Road;
 thence South 01°58'21" East 10.32 feet along the west line of said I-15 Frontage Road;
 thence Southeasterly 278.82 feet along the arc of a 225.00 foot radius curve to the left, (center
 bears North 88°01'39" East and the long chord bears South 37°28'21" East 261.32 feet with a central
 angle of 71°00'00") along the west line of said I-15 Frontage Road;
 thence South 72°58'21" East 124.10 feet along the west line of said I-15 Frontage Road;
 thence South 0°10'52" East 299.17 feet;
 thence South 89°56'48" East 568.78 feet to the west line of the I-15 Frontage Road;
 thence Southeasterly 80.47 feet along the arc of a 1095.92 foot radius curve to the right, (center
 bears South 44°03'35" West and the lone chord bears South 43°50'12" East 80.45 feet with a central
 angle of 4°12'25") along the west line of said I-15 Frontage Road;
 thence South 41°44'00" East 811.82 feet along the west line of said I-15 Frontage Road;
 thence South 89°58'00" East 13.41 feet along the west line of said I-15 Frontage Road;
 thence South 41°44'00" East 85.67 feet along the west line of said I-15 Frontage Road to the point

of beginning.