

**AFFIDAVIT OF CORRECTION**

The attached Second Amended Master Declaration of Protective Covenants, Conditions and Restrictions executed by 1200 South Development, Inc. as Declarant and recorded February 1, 2010, as Entry No. 356633 in Book 1009 at Page 467 describing the following tract of land situated in Wasatch County, Utah:

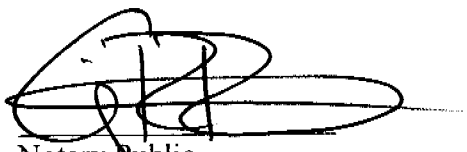
See Exhibit "A" attached hereto and made a part hereof

Is being re-recorded to correct the page sequence.

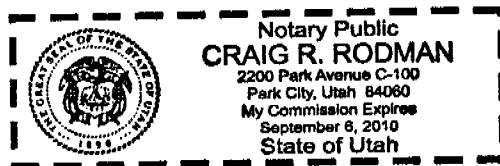
  
Roger Cater

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SUMMIT            )

On the 27<sup>th</sup> day of July, 2010, personally appeared before me Roger Cater, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

  
Notary Public

My Commission Expires: 09/06/2010      Residing at: Summit County, Utah



Ent 356633 Bk 1009 Pg 0467-0508  
ELIZABETH M PALMIER, Recorder  
WASATCH COUNTY CORPORATION  
2010 FEB 01 3:17pm Fee 101.00 JP  
FOR COALITION TITLE AGENCY, INC.  
ELECTRONICALLY RECORDED

**HEBER GATEWAY PLAZA**

**SECOND AMENDED MASTER DECLARATION  
of  
PROTECTIVE COVENANTS, CONDITIONS and RESTRICTIONS**

**Dated: December 8, 2009**

Ent 361219 Bk 1018 Pg 0978

This document has been recorded electronically.  
Please see the attached copy to view  
the Wasatch County Recorder's  
stamp as it now appears in the public record.  
Date: 2/1/10 Entry: 356633  
Book: 1009 Page: 467  
Submitted by: Coalition Title Agency

**HEBER GATEWAY PLAZA**

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**of**  
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**TABLE OF CONTENTS**

	Page
ARTICLE I DEFINITIONS.....	2
ARTICLE II	
MEMBERSHIP IN THE ASSOCIATION	
Section II.1. Membership.....	7
Section II.2. Transfer.....	7
Section II.3. Voting Rights.....	7
Section II.4. Approval of Members.....	8
ARTICLE III	
COVENANT FOR MAINTENANCE ASSESSMENTS	
Section III.1. Creation of Lien and Personal Obligation for Assessments.....	8
Section III.2. Purpose of Assessments.....	8
Section III.3. Regular Assessments.....	8
Section III.4. Capital Improvement Assessments.....	9
Section III.5. Reconstruction Assessments.....	9
Section III.6. Rate of Assessment.....	9
Section III.7. Certificate of Payment.....	10
Section III.8. Exempt Property.....	10
Section III.9. Special Assessments.....	10
Section III.10. Date of Commencement of Regular Assessments.....	10
Section III.11. No Offsets.....	10
Section III.12. Reserves.....	10
ARTICLE IV	
NONPAYMENT OF ASSESSMENTS	
Section IV.1. Delinquency.....	11
Section IV.2. Notice of Lien.....	11
Section IV.3. Foreclosure Sale.....	11
Section IV.4. Curing of Default.....	12
Section IV.5. Cumulative Remedies.....	12
ARTICLE V	
USE RESTRICTIONS	
Section V.1. General Use Restrictions.....	12
Section V.2. Specific Use Restrictions in Site Plan.....	12
Section V.3. Uses Specifically Prohibited.....	12
Section V.4. Generally Prohibited Uses.....	13
Section V.5. Outside Storage.....	14
Section V.6. Waste Disposal.....	14
Section V.5. Hazardous Materials.....	14
Section V.6. Storm Drainage.....	15
Section V.7. Excavation.....	15

Section V.10. Solar Devices .....15  
 Section V.11. Utility Lines Underground.....16  
 Section V.12. Zoning Variances .....16  
 Section V.13. Planning Documents .....16

ARTICLE VI  
 ARCHITECTURAL CONTROL

Section VI.1. Architectural Committee .....16  
 Section VI.2. Compliance with Design Guidelines .....16  
 Section VI.3. Approval of Plans Required.....17  
 Section VI.4. Change in Plans .....18  
 Section VI.5. Submittal and Approval Procedures .....18  
 Section VI.6. Construction of Improvements .....18  
 Section VI.7. Installation of Landscaping.....19  
 Section VI.8. No Engineering Approval.....19  
 Section VI.9. Waiver or Variance of Restrictions .....19

ARTICLE VII  
 GENERAL CONSTRUCTION REQUIREMENTS

Section VII.1. Construction of Improvements on Each Lot.....19  
 Section VII.2. Staging of Construction of Improvements.....20

ARTICLE VIII  
 DUTIES AND POWERS OF THE ASSOCIATION

Section VIII.1. General Duties and Powers of the Association.....20  
 Section VIII.2. Association Rules .....21  
 Section VIII.3. Delegation of Powers.....22

ARTICLE IX  
 REPAIR AND MAINTENANCE

Section IX.1. Repair and Maintenance by Association .....22  
 Section IX.2. Repair and Maintenance by Owner .....22  
 Section IX.3. Standards for Maintenance and Construction.....23  
 Section IX.4. Right of Association to Maintain and Install.....23

ARTICLE X  
 INSURANCE

Section X.1. Types.....24  
 Section X.2. Waiver By Members.....25  
 Section X.3. Other Insurance; Annual Review.....25  
 Section X.4. Premiums and Proceeds.....25

ARTICLE XI  
 DESTRUCTION OF IMPROVEMENTS

Article XI Destruction of Improvements .....25

ARTICLE XII  
 EMINENT DOMAIN

Article XII	Eminent Domain .....	26
ARTICLE XIII		
RIGHTS TO THE COMMON FACILITIES		
Section XIII.1.	Members' Right of Enjoyment. ....	26
Section XIII.2.	Waiver of Use. ....	27
ARTICLE XIV		
EASEMENTS		
Section XIV.1.	Owners' Rights and Duties: Utility and Cable Communication Facilities.....	27
Section XIV.2.	Utilities.....	27
Section XIV.3.	Common Area Easements; Exclusive Use Parking Permitted.....	28
ARTICLE XV		
NATURE OF EASEMENTS AND RIGHTS GRANTED		
Section XV.1.	Easements Appurtenant. ....	28
Section XV.2.	Nature and Effect of Easements.....	29
ARTICLE XVI		
RIGHTS OF LENDERS		
Section XVI.1.	Filing Notice; Notices and Approvals.....	29
Section XVI.2.	Priority of Mortgage Lien. ....	29
Section XVI.3.	Curing Defaults.....	29
Section XVI.4.	Relationship With Assessments Liens.....	30
Section XVI.5.	One Hundred Percent Vote of First Mortgagees.....	30
Section XVI.6.	Other Rights of Mortgagees.....	31
Section XVI.7.	Conflicts.....	31
Section XVI.8.	Voting Rights of Mortgagees.....	31
Section XVI.9.	Notice of Destruction or Taking .....	32
ARTICLE XVII		
GENERAL PROVISIONS		
Section XVII.1.	Covenants to Run With the Land.....	32
Section XVII.2.	Not a Public Dedication. ....	32
Section XVII.3.	Amendments. ....	32
Section XVII.4.	Nuisance .....	32
Section XVII.5.	Officials Not Liable .....	33
Section XVII.6.	Easements.....	33
Section XVII.7.	Personal Covenant .....	33
Section XVII.8.	Cumulative Remedies. ....	33
Section XVII.9.	Enforcement .....	33
Section XVII.10.	Singular Includes Plural.....	34
Section XVII.11.	Construction.....	34
Section XVII.12.	Severability .....	34
Section XVII.13.	Attorney Fees .....	34
Section XVII.14.	Notices .....	34
Section XVII.15.	Effect of Declaration.....	34

WHEN RECORDED MAIL TO:  
Scott C. Welling, Esq.  
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Park City, Utah 84068-0715

**SECOND AMENDED MASTER DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
for  
HEBER GATEWAY PLAZA  
HEBER CITY, UTAH**

THIS SECOND AMENDED MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEBER GATEWAY PLAZA (hereinafter the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the Heber Gateway Plaza Owners Association (hereinafter, "Association").

**RECITALS**

A. 1200 South Development, Inc. ("Declarant") is the developer of that certain real property situated in the City of Heber City, County of Wasatch, and more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof (hereinafter the "Property"). Declarant is also the owner of certain lots within the Property.

B. On December 13, 2007, Declarant recorded the initial Master Declaration of Protective Covenants, Conditions and Restrictions for Heber Gateway Plaza, with the Recorder for Wasatch County, State of Utah, as Entry No. 329670 ("Declaration").

C. On January 8, 2008, Declarant recorded a First Amended Master Declaration as Wasatch County Recorder's Entry No. 330542.

D. On November 20, 2008, Articles of Organization for the Association were filed with the Utah Division of Corporations and Commercial Code.

E. The required majority of the Members of the Association have duly approved a further amendment of the Declaration.

F. On behalf of its Members, by and through its executive officer, the Association deems that the Declaration be amended in the following respects.

NOW, THEREFORE, Declarant, the Association's Members and all persons owning parcels within the Property, hereby covenant, agree and declare that all interests in the Property, as the same may from time to time appear, 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 I**  
**DEFINITIONS**

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

I.1. “Architectural Committee” shall mean the committee provided for in Article VI hereof.

I.2. “Articles” and “Bylaws” shall mean the current 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.

I.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.

I.4. “Association” shall mean the Heber Gateway Plaza Owners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.



I.5. “Association Rules” shall mean the rules adopted from time to time by the Association pursuant to Article VIII hereof.

I.6. “Building” shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.

I.7. “Board” shall mean the Board of Trustees of the Association.

I.8. “City” shall mean the City of Heber City, Utah, a municipal corporation of the State of Utah.

I.9. “Common Areas” shall mean:

(a) All portions of the Property not included within the platted boundaries of the Lots, and including Common Parcels A and B; and

(b) All parts of each Lot which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, interior and incidental roadways, service roads, drainage and irrigation easements, and other similar areas, including those so designated on the Plat, for the common benefit and use of all Occupants and the public.

I.10. “Common Expense” shall mean the actual and estimated costs of:

(a) regular and routine 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, not including capital improvements, which are provided for separately herein;

(b) unpaid Reconstruction and Capital Improvement Assessments;

(c) utilities, trash pickup and disposal, landscape maintenance and other services benefiting the Owners and their Lots, to the extent the cost of such services are required to be paid by the Association;

(d) fire, casualty, liability, workmen’s compensation and other insurance covering the Common Facilities, as well as any other insurance coverage deemed appropriate by the Board;

(e) reasonable reserves as deemed appropriate by the Board;

(f) bonding the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(g) taxes assessed with respect to the Common Facilities or activities of the Association;

(h) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Facilities or portions thereof;

(i) discharge of the duties of the Board, the Architectural Committee or other committees of the Association pursuant to this Declaration; and

(j) 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.

I.11. "Common Facilities" shall mean:

(a) all Common Areas, as well as the improvements and fixtures thereto and the personal property thereon which are owned by or leased to the Association 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 Occupants 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 outdoor furniture.

(c) The Common Facilities shall include exterior landscaping features on a Lot, including those which are the obligation of an Owner to install. The obligation of an Owner to install landscape features shall include, but is not limited to, planters, irrigation lines, sprinklers, valves and connection to the Project's irrigation water supply source. The Association shall thereafter provide for the maintenance and repair of landscape features on a Lot, including plants, planters, landscaping ornamentation and irrigation equipment, as a Common Expense of the Association. Likewise, maintenance of parking area signage, striping and curbing on each Lot, including exclusive parking areas, following the installation thereof at Owner's expense, shall be a Common Expense.

The Common Facilities may also be designated, in whole or in part, in the final Plat. Declarant shall convey the Common Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be pro rated as of the date of the conveyance), title, exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

I.12. "Declarant" shall mean 1200 South Development, Inc., a Utah corporation.

I.13. "Design Guidelines" shall mean the "Heber Gateway Plaza Design Guidelines for Individual Lots and Building Development," guidelines prepared by Declarant, and as may be amended from time to time, setting forth certain architectural standards, specifications regarding

the location, and design of the Improvements, construction material, parking area features, lighting, landscaping, signage and other matters related to improvements on the Property. The initial Design Guidelines, established by Declarant on May 9, 2007, and as may be modified from time to time, are incorporated herein by reference. Copies of the Design Guidelines shall be made available at the office of the Association.

I.14. "Exhibit" shall mean those documents so designated herein and attached hereto and each of such Exhibits is by this reference incorporated into this Declaration.

I.15. "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.

I.16. "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 and facilities, 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.

I.17. "Lot" shall mean those individual numbered parcels on the subdivision Plat, all as more particularly described in Exhibit "B", attached and incorporated by reference. If two or more contiguous Lots are held by the same Owner, such commonly owned Lots may, at the option of the Owner, be combined and treated as a single Lot for purposes of this Declaration; provided, however, that the construction and location of Improvements thereon shall be subject to the review and approval requirements of Article VI and the use restrictions set forth in Article V. 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 Plat for such Lot.

I.18. "Member" shall mean every individual or entity who qualifies for membership in the Association pursuant to Article II, including Declarant so long as Declarant qualifies for membership pursuant to said Article. The terms "Member" and "Owner" may be used

interchangeably where the context requires in order to achieve the purpose and intent of the subject matter.

I.19. “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

I.20. “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.

I.21. “Net Building Floor Area” shall mean with respect to any Lot the gross floor area (in square feet) of all Buildings located on such Lot, less (a) penthouse and mezzanine areas used for mechanical, electrical, telephone, and other operating equipment, (b) lawn and garden or outside sales areas, (c) loading locks, (d) basement or ground level areas in a Building used exclusively for longer term storage, but including area for storage of inventory .

I.22. “Net Land and Building Floor Area” shall mean with respect to any Lot the aggregate of (a) the number of square feet of land contained in such Lot plus (b) the Net Building Floor Area of such Lot.

I.23. “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.

I.24. “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, or the purchaser under a land sale contract, but excluding those having such interest merely as security for the performance of an obligation.

I.25. “Permittees” shall mean all Occupants and all customers, employees, licensees and other business invitees of Occupants.

I.26. “Plat” shall mean the Record of Survey Map of the Property filed with respect to the Subdivision and showing thereon eight (8) lots, each of which is identified by a lot number, along with two (2) common area parcels. The original Plat is recorded as Entry No. 329671, at Book 956, Page 0770, in the records of the County Recorder of Wasatch County, Utah. “Plat” shall also include any amendment or supplement to the original Plat, and shall refer to any additional plat which may be recorded with any amended or supplemental declaration.

I.27. “Project” shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon.

I.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 which shall become subject to this Declaration.

I.29. "Set Back" shall mean the distance from the property line of the Lot to the Building or Improvement that is subject to any Set Back requirements provided in this Declaration, the Design Guidelines, the Plat, or in the City's zoning ordinances.

I.30. "Substantial Completion" shall mean the point in time when any manner of occupancy permit has been issued by the City.

## ARTICLE II MEMBERSHIP IN THE ASSOCIATION

II.1. Membership. Every Owner shall be a Member of the Association, and shall be subject to the terms and covenants of this Declaration, the Articles, Bylaws and Association Rules, to the extent not in conflict with this Declaration, and as may be amended from time to time. Membership in the Association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in a Lot. Ownership of a Lot shall be the sole qualification for membership in the Association; provided, however, a Member's voting rights or privileges with respect to the Common Facilities or the business and affairs of the Association 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.

II.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.

II.3. Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules. The Association shall have one class of Members. The Owner or Owners of each Lot in good standing as Members shall be entitled to one (1) vote for each one-tenth (1/10) acre of land encompassed by the Lot, including any Common Area therein as defined by Section I.9.(b). The fractional voting interests allocated to each Lot are set forth in Exhibit C, attached and incorporated by reference. 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 at least five (5) days prior to the subject vote.

II.4. Approval of Members. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration, the Articles, Bylaws, or any contract executed by the Association, a simple majority vote of the current voting power of Members constituting a quorum and in good standing shall carry the matter.

### ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

III.1. Creation of Lien and Personal Obligation for 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 or execution of a purchase contract creating a present ownership interest, whether or not so expressed in the instrument, is deemed to covenant and agree to timely pay the Association all of the following: (i) Regular Assessments; (ii) Capital Improvement Assessments; (iii) Reconstruction Assessments; and (iv) any Special Assessment levied against an individual owner (collectively, "Assessments"). Such Assessments shall 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 Lots affected and shall be enforced and collected by the filing of a lien upon the record of title for the Lot assessed. Each such Assessment, together with interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due. The personal obligation shall not bind the successor in title of an Owner unless expressly assumed by such successor; provided, however, any common expense lien filed against a Lot shall remain an encumbrance thereon until paid notwithstanding the transfer of title thereto.

Nothing in this Section shall be construed to permit or create a lien against a Lot if prohibited by applicable State law.

III.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and prosperity of the Members and to perform the duties and exercise the powers of the Association enumerated in its Articles, Bylaws, and this Declaration.

III.3. Regular Assessments. The Board is expressly authorized to adopt and amend budgets from time to time after giving due consideration to the current maintenance, operational and other costs and 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 and fix the total Common Expenses to be incurred for the forthcoming fiscal year. Written notice of the annual budget and Regular Assessments shall be sent by the Association to every Member within thirty (30) days of the beginning of the fiscal year. Each Member shall thereafter pay to the Association that Member's Regular Assessment, in such installments and at such times as may be established by the Board. In the event the Board should 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 issue a supplemental estimate of the Common Expenses and determine the

revised amount of Regular Assessment payable by each Owner, and the date or dates when due. In the event a Regular Assessment exceeds the actual Common Expenses ultimately incurred during a fiscal year, the unexpended portion shall be credited to the accounts of Members who have paid their Assessments, to be applied first against any balance owing by the Member, and then to the Member's next accruing Regular Assessment obligation, or as a refund to the Member at the Association's sole option, as expressed by statement to be provided to the Members no later than thirty (30) days after the end of the fiscal year.

III.4. Capital Improvement Assessments. In addition to Regular Assessments, the Board may levy in any fiscal year, a Capital Improvement Assessment applicable to that fiscal year only, for the purposes of defraying, in whole or in part, the cost of construction or of a designated capital improvement to or for the benefit of the Common Facilities, to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Article III hereof, including the necessary fixtures and personal property related thereto. Provided, however, the Board shall not impose a Capital Improvement Assessment exceeding twenty-five percent (25%) of the current estimated annual Common Expenses without the approval of Members holding a majority of the voting power in good standing. 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, which amounts must be expended for their designated purposes in the same fiscal year as collected, or credited back to each Member as provided for in Section III.3 herein. Capital Improvement funds shall not be commingled with any other funds of the Association, excepting any funds held as Reserves.

III.5. Reconstruction Assessments. In addition to Regular and Capital Improvement Assessments, the Board may levy a Reconstruction Assessment for the purposes of defraying, in whole or in part, the cost of replacement of such of the Common Facilities that are in disrepair. The amount, approval and expenditure thereof shall as that established in Section III.4 for a Capital Improvement Assessment.

III.6. Rate of Assessment. All Assessments, excepting Special Assessments, shall be fixed by the Board at a rate computed and assessed with respect to each Lot as the ratio that the Net Land and Building Floor Area of such Lot bears to the total Net Land and Building Floor Area of all Lots. The pro rata percentage share derived therefrom and the basis for the initial rate of Assessments for each Lot is described in Exhibit "C", attached and incorporated by reference. The pro rata shares are subject to adjustment from time to time as improvements to the Lots are made, to reflect the actual Building Floor Area(s) presently constructed on the Lots. All Regular, Reconstruction and Capital Improvement Assessments may be collected at intervals selected by the Board.

Provided however, a Capital Improvement or Reconstruction Assessment may be allocated at a different rate than prescribed above when the Board determines that: (i) the benefit of the Capital Improvement or Reconstruction Assessment does not benefit each Lot uniformly and will logically serve one or more Lots more than the others; or (ii) when there are unique uses or burdens created by the use or occupancy of one or more Lots such that the uses generate parking demand materially different from the parking configuration and uses previously approved by the Architectural Committee and the relevant local building authority, and which materially contributes to the need for the improvements to be funded by such Assessments; or

(iii) a uniform application of the Assessment formula is otherwise deemed by the Board to be inequitable under the circumstances.

III.7. 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.

III.8. Exempt Property. The Common Parcels A and B shall be exempt from the Assessments created herein.

III.9. Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred, or estimated to be necessary, in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, together with attorneys' fees, interest and other charges related thereto. In the event the Association provides materials or services at the request of an Owner, and other than that which is required by its obligations under this Declaration, such materials or services may be collected as a Special Assessment upon the involved Owner only.

III.10. Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots within the Property upon the substantial completion, to be determined by the Declarant, of the improvements which benefit from the assessments, specifically roads, sidewalks, and other improvements to or upon the Common Facilities. In the event the amount budgeted to meet Common Expenses for any year exceeds the amount actually incurred for Common Expenses, the Board in its sole discretion may either reduce the amount of the Regular Assessment or abate collection of Regular Assessments.

III.11. 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. This Section shall not, however, be construed to limit or nullify any right or remedy reserved under Section XVII.1.

III.12. Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board and collected annually as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Facilities, and other operations of the Association, and for no other purposes, which annual reserve amount shall not exceed the current estimated annual Common Expenses without the approval of Owners holding a majority of the voting power in good standing. 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.



**ARTICLE IV**  
**NONPAYMENT OF ASSESSMENTS**

IV.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 or Owner personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section IV.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 and Owner 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.

IV.2. Notice of Lien. Each Owner and Member shall be deemed to have covenanted and agreed, by taking ownership of a Lot per Section III.1, that all Lots shall be subject to encumbrance by lien on record of title if any Assessment is delinquent more than thirty (30) days following the due date thereof. A notice of claim or lien filed pursuant hereto 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 IV.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. No action shall be brought to foreclose an Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim or 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.

IV.3. Foreclosure Sale. An 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. Pursuant thereto, each Owner and Member specifically agrees that: such lien shall be deemed a trust deed; such Owner shall be construed to be a trustor; and the Association construed to be the beneficiary of the trust deed, all pursuant to Utah Code Annotated Sections 57-1-19, et al. The Association may appoint as trustee any person or entity qualified to act as a trustee under said trust deed statute, and to foreclose such lien by power of sale pursuant to said trust deed statute. 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.

IV.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 or claim, 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.

IV.5. Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder 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 V USE RESTRICTIONS

V.1. General Use Restrictions. Subject to the provisions of this Article V, Lots within the Property shall only be used for those uses and categories of uses from time to time permitted within the City's SC2 (Shopping Center 2) Zone.

V.2. Specific Use Restrictions in Site Plan. Each of the Lots shall be subject to the uses and dedications set forth in the Site Plan, recorded December 13, 2007, as Wasatch County Recorder's Entry No. 329671, as may be amended from time to time.

V.3. Uses Specifically Prohibited. Notwithstanding anything to the contrary in Sections V.1 and V.2, 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. Provided, however, a use hereinafter designated as that which may be permitted is considered a conditional use, and the determination of whether such use is permissible and the conditions upon which approval may be granted, are within the sole discretion of the Architectural Committee. Specifically prohibited are:

- (a) Terminals, including truck or bus terminals, and other distribution facilities.
- (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, bankruptcy sales (unless pursuant to a court order), or auction operations.
- (g) Fairs or carnivals, except as occasional promotional events incidental to the operation of a shopping center or similar use.
- (h) Churches, synagogues, mosques or other places of worship.
- (i) Except as may be permitted pursuant to Section VI.9, 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) Sales by transient merchants utilizing vehicles or booths.
- (k) Industrial or manufacturing uses, excepting light manufacturing incidental to primary use as may be permitted pursuant to Section VI.9.
- (l) Repair establishments other than establishments that repair jewelry as part of a jewelry store.
- (m) Junk or salvage yards.
- (n) Cabinet and carpenter shops.
- (o) Plumbing or sheet metal shops, excepting plumbing supply use incidental to primary retail use, as permitted pursuant to Section VI.9.
- (p) Petroleum storage, sales, processing, or production.
- (q) Automobile body and fender repair work.
- (r) Except as may be permitted pursuant to Section VI.9, skating rink, nightclub, teenage discotheque, discotheque, dance hall, amusement gallery, video game parlor, pool room, massage parlor, off-track betting facility, casino, card club, bingo parlor, or facility containing gaming equipment.
- (s) Except as may be permitted pursuant to Section VI.9, establishments (including, without limitation, bookstores) engaged in the business of selling, exhibiting or delivering materials which may be considered pornographic or obscene, except to the extent that such materials are lawfully exhibited and/or sold by other establishments in Wasatch County, Utah, including public libraries therein.

V.4. 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: (i) detectable outside the boundaries of the Lot where created; and (ii) which result in repeated complaints from Permittees; or (iii) which may be detrimental to the health, safety, welfare or comfort of any Permittee, to the condition of any other portion of the Property, or to any vegetation within the Property;

(b) discharge of harmful or unlawful fluids, gases, solid wastes or other harmful materials into any drainage canal, waterway, ditch or retention pond;

(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 activity or use on a Lot which: (i) may be heard by the human ear without detection equipment outside the boundaries of the Lot from which the sound or noise is emanating, and (ii) results in repeated complaints from Permittees;

(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) persistent 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.

V.5. 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, except that which is incidental to the construction of an Improvement on a Lot, as permitted.

V.6. 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.

V.7. 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 V.7(a) above or if a Hazardous Condition exists at any time, then the Owner of such Lot shall indemnify, defend and hold the Owners of each other Lot within the Property and such other Owners' members, partners, officers, directors, shareholders, employees, and agents 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 Section V.7 shall survive the termination of this Declaration and the discontinuance of any hazardous activity or condition. A violation or breach of the obligations in this Section V.7 shall be actionable notwithstanding the absence of personal injury or property loss resulting therefrom, each Owner waiving any defense to such action based upon the economic loss rule.

V.8. Storm Drainage. All storm drainage facilities on each Lot shall conform to the requirements of the master storm drainage system 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.

V.9. 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 any disturbed ground shall be graded, leveled and landscaped. Such excavation restoration or mitigation shall be completed within a timeframe and upon such conditions as the Architectural Committee shall determine, in the reasonable exercise of its sole discretion.

V.10. 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.

V.11. 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 unavoidably necessary, in accordance with then current standard practice in the utility service field.

V.12. Zoning Variances. No Owner of any Lot within the Property shall seek or obtain from the City a zoning variance, conditional use permit or rezoning with regard to a Lot without the prior written approval of the Architectural Committee.

V.13. 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 VI ARCHITECTURAL CONTROL

VI.1. Architectural Committee. The Board shall act as an Architectural Committee for the regulation of Improvements undertaken on the Lots, separate and apart from the Board's function as the Association's governing entity. The Declarant shall have the right to appoint the initial members of the Architectural Committee. The Board shall, in accordance with the Bylaws, have the right to appoint, remove, augment or replace any two (2) members of the Architectural Committee until such time as Declarant has conveyed ownership of all Lots, at which time the Board shall have the right to appoint all five (5) members of the Architectural Committee.

VI.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:

- (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 Project; 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.

VI.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. 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 performed completely within a Building may be undertaken without such approval, subject to the use restrictions of Article V. 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.

VI.4. Change 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.

VI.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, and the Architectural Committee shall render a decision within 30 days of Owner's submittal of all plans reasonably necessary for approval review. 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 a re-submittal, 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 express requirement of this Declaration or the Design Guidelines.

VI.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 the stated 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 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.

VI.7. Installation of Landscaping. All landscaping for a Lot shall be installed according to the approval given by the Architectural Committee as soon as reasonably practicable following Substantial Completion of the primary Building on the Lot, and in all events not later than six (6) months following Substantial Completion.

VI.8. No Engineering Approval. Plan approval shall not be extend to engineering design, and by approving plans neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans, or any non-compliance with applicable building ordinances, the Uniform Building Code, or standards established within the industry.

VI.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 Project 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 VII** **GENERAL CONSTRUCTION REQUIREMENTS**

VII.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 Permittee concerning 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 and building standards.

VII.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, unless elsewhere authorized by the express written consent of another Owner or the Architectural Committee.

## **ARTICLE VIII** **DUTIES AND POWERS OF THE ASSOCIATION**

VIII.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 this Section VIII, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments and liens;
- (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 XIV 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 commercial properties 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 Project and appoint the Architectural Committee in connection therewith, pursuant to Article VI hereof;

(j) have 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 for trash disposal and snowplowing services 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 communication services for the benefit of Owners who desire such services; 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 such district.

VIII.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 as it deems reasonable and appropriate for the benefit of the Owners, Association and Project. 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 or Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules, along with any amendment or repeal thereof, shall be delivered to each Member 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 Member 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.

VIII.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 property manager, professional services provider, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

**ARTICLE IX**  
**REPAIR AND MAINTENANCE**

IX.1. Repair and Maintenance by Association. Without limiting the general scope of the duties and powers described 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, unless otherwise specifically required of an Owner;

(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 the private rights-of-way within the Project; and

(f) maintain all other areas, facilities, equipment, or aesthetic components of whatsoever nature as may be from time to time required by the vote of Members holding not less than seventy-five percent (75%) of the voting power of the Members in good standing.

IX.2. Repair and Maintenance by Owner. Every Owner shall:

(a) maintain the 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 the Owner's Lot in good clean, safe, attractive, and first-class condition and painted as required, keep such Lot free from weeds, trash and debris, and keep all signs and lighting clean and functional.

IX.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 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 therefrom, 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.

IX.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 VI 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 IX.4(a) to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor 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. A decision of a committee may be appealed to the Board, which may conduct a review by either examination of the evidence presented without hearing, or by re-hearing of such evidence. The decision thereon by 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, that entity may cause such maintenance or installation to be accomplished, in accordance with the following provisions:

(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 such 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 such 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.

(e) 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 X** **INSURANCE**

X.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, the Members and the Association and persons upon the Property with the permission of an Owner, 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 commercial developments in the area of the Project.

(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.

X.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.

X.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.

X.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 this Article. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

## **ARTICLE XI** **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 the 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 XII**  
**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 Owners and 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 condemner 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, subject to the prior rights of Mortgagees who have an interest in such award. 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 XIII**  
**RIGHTS TO THE COMMON FACILITIES**

XIII.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 XVI 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 seventy-five percent (75%) 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 (b) above, all or any portion of the Common Facilities to said district.

XIII.2. Waiver of Use. No Member or Owner may be exempted from personal liability for Assessments duly levied by the Association, nor a Lot released from the liens and charges hereof, by waiver of the use and enjoyment of the Common Facilities, or the abandonment of the Lot.

#### ARTICLE XIV EASEMENTS

XIV.1. Owners' Rights and Duties: Utility and Cable Communication Facilities. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television or other communication lines, and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer, water, electricity, gas, telephone and cable communication 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 therefor, 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.

XIV.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 Plat are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

XIV.3. Common Area Easements; Exclusive Use Parking Permitted. 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 abutting or located on any portion of the Property; (3) the Common Facilities; and (4) the parking areas established on each Lot. Provided, however, such use upon a Lot shall be limited to those portions thereof which have been improved by the Owner for use as pedestrian walkways and have been made available by such Owner for general use, and subject to the reduction, increase or relocation thereof from time to time by such Owner.

(b) Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Lot and (1) the designated access points onto any public street abutting the Property; and (2) the Common Areas, provided however, such use of a Common Area upon a Lot is limited to those portions of the Lot which have been improved from time to time for vehicular access, traffic and parking, subject to reserved parking usage pursuant to Section XIV.3(c), and subject to reduction, increase or relocation from time to time by the Owner of such Lot.

(c) The easements established by this Section XIV.3 pertaining to use of parking areas shall be subject to, and there is hereby created, the right and authority to reserve a portion of any parking area on a Lot for the exclusive use of the Owner and other Permittees using the facilities on such Lot. Exclusive use parking may be established by an Owner in accordance with standards established by the Board for signage, stripping, curbing, barriers and the configuration of parking spaces within such parking area. The initial cost of such features and facilities to be borne solely by the Owner. The exclusive use parking areas of any Lot may be shared with another Lot as the Owners thereof may agree, upon the approval of the Board as to the extent and nature of such shared use, as well compliance with Plat approval and pertinent governmental regulations. Exclusive use parking designation shall not disallow travel by excluded vehicles through such areas where reasonably necessary to facilitate egress and ingress to, from and within the Project.

## **ARTICLE XV**

### **NATURE OF EASEMENTS AND RIGHTS GRANTED**

XV.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.

XV.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 Members and other Permittees with respect to the 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 XVI** **RIGHTS OF LENDERS**

XVI.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 agent, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Project. Such notice shall describe the Lot encumbered and whether the Mortgagee is a First Mortgagee. If the approval of Mortgagees is required pursuant to this Declaration, or a mortgage instrument itself, it shall be deemed to mean the vote or approval of only 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. A Mortgagee's right to notification pursuant to Section XVI.4(b) shall not be affected by the failure to deliver the notice referred to in this Section 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.

XVI.2. Priority of Mortgage Lien. Except as provided in this Article XVI, 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.

XVI.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 (hereinafter

“Events of Foreclosure”), shall not be obligated to cure any breach of the provisions of this Declaration, except as may be provided in Section XVI.4(b), if such title was obtained either: (i) without notice or actual knowledge of such breach; or (ii) under circumstances where such breach is noncurable or of a type which is not practical or feasible to cure.

XVI.4. Relationship With Assessments Liens.

(a) The lien provided for in Article III 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, or part thereof, becomes due.

(b) If any Lot subject to an Assessment lien created by any provision hereof shall also be subject to a Mortgage lien: (1) the foreclosure of an Assessment lien shall not operate to affect or impair such Mortgage lien which is recorded prior to the date of recording of the Assessment lien; and (2) the foreclosure of an Assessment lien shall not operate to affect or impair a Mortgage lien recorded after date of recording of such Assessment lien being foreclosed without the Association having provided written notice to said Mortgagee at least sixty (60) days prior to any foreclosure sale or commencement of a judicial foreclosure proceeding; and (3) an Event of Foreclosure shall not operate to affect or impair such Assessment lien which was of record at the time of an Event of Foreclosure, but without prejudice to the rights of a foreclosing Mortgagee or its successor transferee to recover from the delinquent Owner; provided however, if the Assessment lien was not of record, persons who obtain an interest through an Event of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as have accrued up to the time of the Event of Foreclosure, but shall be subject to the lien hereof to the extent such charges accrue subsequent to the Event of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of an Event of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrued after recordation of the mortgage instrument upon which the Event of Foreclosure is based, 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 or Member from obligation to pay for any Assessment levied pursuant to this Declaration.

XVI.5. One Hundred Percent Vote of First Mortgagees. The following actions shall not be undertaken except upon the prior written approval of at least one hundred percent (100%) of First Mortgagees who have complied with Section XVI.I:

(a) Dissolution of the Association, or the abandonment or termination of maintenance, of the Common Facilities by the Association; or

(b) Amendment of a provision of this Declaration, the Bylaws or the Articles which would materially and detrimentally affect the security interests of Mortgagees and, without limiting the scope of the foregoing, including the provisions of this Article or any other rights specifically granted to First Mortgagees pursuant to any other provision of this Declaration; provided however, Articles XI, XII, XIII, XIV, XVI and XVII shall not be amended in any event without such unanimous consent of First Mortgagees; or

(c) Abandonment, partition, sell, alienation, subdivision, release, transfer, hypothecation or other encumbrance of 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.

XVI.6. Other Rights of Mortgagees. Any Mortgagee, or its mortgage servicing contractor, who has complied with the notice provisions of Section XVI.1, 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 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 a 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 Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Mortgagees whose written request therefor to the Association specifies the Lot or Lots to which such request relates.

XVI.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.

XVI.8. Voting Rights of Mortgagees. In the event of a default by the Owner of any Lot under the terms of any Mortgage or the promissory note secured thereby, the Mortgagee or its 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 the times such default may continue. The Member's voting rights shall be restored upon cure of such default.

XVI.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 Mortgagee affected by such destruction, taking or threatened taking which has complied with the notice provisions of Section XVI.1. As used herein, "substantially damaged" shall mean an amount exceeding Ten Thousand Dollars (\$10,000). If requested in writing by a Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Mortgagee.

## ARTICLE XVII GENERAL PROVISIONS

XVII.1. Covenants to Run With the Land. This Declaration and all the provisions hereof shall constitute the covenants to run with the Property as equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of all parties who hereafter acquire any interest in a Lot, as well as their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or Occupant of a Lot shall comply with and be responsible for the compliance of their Permittees, and all interests in all Lots or in the Common Facilities shall be subject to, the terms of this Declaration, as well as the provisions of Association rules and any other instruments, agreements, and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the acquiring party shall be deemed to have consented to, and agreed to be bound by, each and every provision of this Declaration, the Articles, Bylaws and Association Rules.

XVII.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.

XVII.3. Amendments. Subject to other provisions of this Declaration that may apply, including, without limitation, the rights of Mortgagees pursuant to Article XVI hereof or otherwise, this Declaration may be amended only by the affirmative vote of not less than sixty-seven percent (67%) of the voting power of the Members in good standing; and further, this amendment provision shall not be amended to allow amendments by the vote of less than a majority of the voting power of the Members in good standing. An amendment or modification shall be effective when executed by the President and attested to by the Secretary/Treasurer of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the office of the Recorder of Wasatch County, State of Utah.

XVII.4. 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, in addition to such other acts or omissions recognized as nuisances under Utah statutory or common law, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable and may be exercised by the Association or any Member in good standing. Such remedies shall be deemed cumulative and not exclusive.

XVII.5. Officials Not Liable. To the fullest extent permitted by law, neither the Board, the Officers, the Architectural Committee nor any other committee of the Association or any member of such Board or committee shall be liable to any Member, Owner 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 which such Board, Officer, committees or persons reasonably believed to be within the scope of their duties.

XVII.6. Leases. Any agreement for the leasing or rental of a Building or Lot shall provide that such lease is subject in all respects to the provisions of this Declaration, the Articles, the Bylaws and the Association Rules. All leases shall provide that any failure by the lessee thereunder to comply with the terms of the foregoing document shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, Bylaws and Association Rules.

XVII.7. 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.

XVII.8. Cumulative Remedies. All rights, duties, options and remedies under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, Members in good standing and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies, or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

XVII.9. Enforcement. Either the Association or any Member in good standing 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 or 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 a 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 a 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.

XVII.10. 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.

XVII.11. Construction. The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development of a retail commercial and office park and for the maintenance of the Project 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.

XVII.12. 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.

XVII.13. Attorney Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the Articles or Bylaw, 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, including fees and costs incurred on appeal. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall constitute a Special Assessment with respect to the Lot involved in the action.

XVII.14. Notices. Any notice to be given to a Member or a Mortgagee or Mortgage servicing agent under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to a Member 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 Member 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 Member's Lot. Any notice so deposited shall be deemed delivered seventy-two (72) hours after such mailing. 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 servicing agent for the purposes of notice.

XVII.15. 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.




IN WITNESS WHEREOF, this Second Amended Master Declaration of Protective Covenants, Conditions and Restrictions for Heber Gateway Plaza, Heber City, Utah, has been executed the day and date first written above.

HEBER GATEWAY PLAZA PROPERTY OWNERS ASSOCIATION, INC.,  
a Utah non-profit corporation

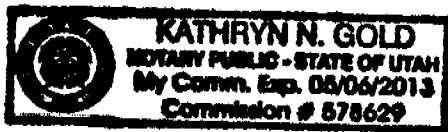
By:   
Fred Grambau  
Its: President

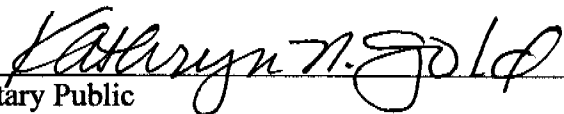
ATTEST:

  
Secretary/Treasurer

STATE OF UTAH                    )  
  : ss.  
County of Summit                )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of December, 2009, by FRED GRAMBAU, the President of the Heber Gateway Plaza Property Owners Association, Inc., by the authority of and in accordance with its Bylaws.



  
Notary Public

**EXHIBIT A**  
to  
**SECOND AMENDED MASTER DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

**HEBER GATEWAY PLAZA SUBDIVISION DESCRIPTION (12/05/2007)**

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF 1200 SOUTH STREET, AS PER DEDICATION PLAT RECORDED NOVEMBER 8, 1999 AS ENTRY NO. 219319 IN BOOK 443 ON PAGES 107-116 OF THE OFFICIAL RECORD, SAID POINT BEING SOUTH 89°58'07" EAST ALONG THE SECTION LINE 770.97 FEET AND SOUTH 00°11'24" WEST 20.67 FEET FROM A FOUND WASATCH COUNTY BRASS CAP MONUMENT MARKING THE NORTHWEST CORNER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE EASTERLY ALONG SAID SOUTHERLY LINE THE FOLLOWING (8) COURSES: (1) NORTH 89°54'05" EAST 376.40 FEET TO A POINT OF CURVATURE, (2) SOUTHEASTERLY ALONG THE ARC OF A 4958.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 01°33'42" A DISTANCE OF 135.14 FEET (CHORD BEARS SOUTH 89°19'04" EAST 135.14 FEET) TO A POINT OF COMPOUND CURVATURE, (3) SOUTHEASTERLY ALONG THE ARC OF 15.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 88°32'01" A DISTANCE OF 23.18 FEET (CHORD BEARS SOUTH 44°15'53" EAST 20.94 FEET), (4) SOUTH 00°00'27" WEST 3.03 FEET, (5) SOUTH 89°59'33" EAST 60.00 FEET TO A POINT ON THE ARC OF A 15.00 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 89°59'30" EAST), (6) NORTHEASTERLY ALONG THE ARC OF SAID 15.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 92°49'37" A DISTANCE OF 24.30 FEET (CHORD BEARS NORTH 46°25'18" EAST 21.73 FEET); (7) SOUTH 87°09'52" EAST 295.07 FEET TO A POINT OF CURVATURE, (8) SOUTHEASTERLY ALONG THE ARC OF A 5042.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 02°07'51" A DISTANCE OF 187.51 FEET (CHORD BEARS SOUTH 88°13'47" EAST 187.50 FEET); THENCE SOUTH 00°19'57" EAST 395.90 FEET; THENCE NORTH 89°55'29" WEST 337.40 FEET; THENCE NORTH 02°46'10" WEST 16.50 FEET; THENCE SOUTH 89°34'09" WEST 757.56 FEET TO A POINT ALONG THE EASTERLY LINE OF STATE HIGHWAY 40; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE THE FOLLOWING (2) COURSES: (1) NORTH 21°26'10" WEST 26.32 FEET, (2) NORTH 37°54'57" WEST 238.80 FEET; THENCE NORTH 52°44'00" EAST 208.04 FEET; THENCE NORTH 00°11'24" EAST 70.20 FEET TO THE POINT OF BEGINNING.

CONTAINS 465,001 SQ. FT., OR 10.675 ACRES (8 LOTS).

Tax Serial Nos. OWC-1667-1, OWC-1673 and OWC-1674

**Exhibit B**  
**to**  
**Second Amended Declaration for**  
**Heber Gateway Plaza**

LOT 1, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0001)

LOT 2, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0002)

LOT 3, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0003)

LOT 4, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0004)

LOT 5, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0005)

LOT 6, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0006)

LOT 7, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0007)

LOT 8, HEBER GATEWAY PLAZA, according to the official plat thereof on file and of record in the Wasatch County Recorder's Office.  
(Tax Serial No.: 0QP-0008)

**Exhibit C**  
**to**  
**Second Amended Declaration for**  
**Heber Gateway Plaza**

<b>Lot</b>	<b>Sq. Ft.</b>	<b>Acreage</b>	<b>Votes</b>	<b>Pro Rata Assessment Share (June 2009)</b>
1	120,621	2.769	28	28.14%
2	48,598	1.116	11	11.34%
3	50,414	1.157	12	11.76%
4	45,786	1.051	11	10.68%
5	42,871	0.984	10	10%
6	36,409	0.836	8	8.5%
7	43,651	1.002	10	10.18%
8	40,241	0.924	9	9.39%
<b>TOTAL</b>	<b>428,591</b>	<b>9.839</b>	<b>99</b>	<b>100%</b>

CP-A	Common Parcel A	22653 Sq. Ft.	0.52 Acre
CP-B	Common Parcel B	13757 Sq. Ft.	0.316 Acre