

**When Recorded, Mail To:**

Hillside Plaza Partners, LLC  
c/o Doerken Properties, Inc.  
1448 15<sup>th</sup> Street, Suite #100  
Santa Monica, CA 90404  
Attn: Allen J. Lynch

**DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS ("Declaration") is made by the owner of Lot 1 of the Hillside Plaza Subdivision ("Declarant"), which is currently HILLSIDE PLAZA PARTNERS, LLC..

**RECITALS:**

- A. Declarant is the owner of certain real property known as Hillside Shopping Center "Shopping Center" located in Salt Lake County, State of Utah, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.
- B. Declarant desires that the Shopping Center is developed and maintained as an integral retail shopping center notwithstanding that the Shopping Center is divided and may be further divided into multiple lots that may be held by different owners, The design and development of said complex shall be subject to this Declaration which is for the purpose of enhancing, maintaining, protecting and improving the value and amenities of said complex. To that objective, Declarant desires to provide for the establishment of reciprocal access and parking easements, impose upon the Property maintenance obligations with respect to the access and parking easements, and subject the Property to certain conditions, covenants and restrictions, upon and subject to which all the Property shall now and hereafter be held, improved and conveyed, in order to establish a general plan for the improvement, development and operation of the Property for the benefit of the Property and all of the owners of any lots within the Property.

Now, therefore, in order to establish a plan for the development, improvement, and maintenance of the Property, the Parties hereby publish and declare as follows:

**ARTICLE I**  
**Definitions**

- 1. **"Improvement"** shall mean and refer to any alteration of or addition to a Building exterior (including painting and signage) that an Owner other than the Declarant desires to undertake with respect to the Owner's Building or Lot. Notwithstanding the foregoing, the term "Improvement" shall not include any improvements or structures located entirely within a Building.

2. **"Occupant"** refers to the Parties and to any other person from time to time entitled to use and occupy any of the Parcels under any lease, license, concession agreement , or any other instrument or arrangement.'
3. **"Owner"** or **"Owners"** refers to all owners of the Lots.
4. **"Parcel"** or **"Parcels"** refers to the Hillside Shopping Center or any or all, as applicable, of Lots 1 and 2 of the Shopping Center.
5. **"Party"** or **"Parties"** refers to Hillside and its successors and assigns.
6. **"Permittee"** or **"Permittees"** refers to all Occupants and their customers, employees, agents, contractors, invitees and licenses.
7. **"Person"** means and includes individuals, joint ventures, partnerships, limited liability companies, firms, associations, corporations, and any other form of business entity.
8. **"Property"** means and includes the Hillside Shopping Center and Lots 1 and 2 of the Shopping Center.
9. **"Grocery Store Lease"** shall mean that certain Lease dated as of July 31, 1974 between Declarant (as successor in interest to Hillside Plaza Associates, a partnership) and SEG Stores, Inc. (successor in interest to Safeway Stores, Incorporated) as it has been and may be further amended from time to time.
10. **"Drug Store Lease"** shall mean that certain Lease dated as of May 6, 1974 between Declarant (as successor in interest to Hillside Plaza Associates, a partnership) and Thrifty Payless, Inc. (successor in interest to Skaggs Companies, Inc., a Delaware corporation), as it has been and may be further amended from time to time.

ARTICLE II  
Other Agreements

The Shopping Center is subject to that certain Declaration of Restrictions and Reciprocal Easements dated August 1, 1976 and recorded August 26, 1976 (the **"Existing CC&R's"**).

ARTICLE III  
Restrictions

3.1 Lot 2 shall only be used for purposes approved in writing by the Owner of Parcel 1, which consent shall be in its sole and absolute discretion. Such uses shall be consistent with those uses found in first class shopping centers.

3.2 The Shopping Center and any portion thereof shall not be used for warehousing (other than the temporary storage of fixtures and equipment by an occupant of the Shopping Center), industrial, manufacturing, wholesaling or residential purposes. No portion of the Shopping Center shall be used for a massage parlor, pornographic book store or for a store selling or renting pornographic films or videos (except that a store may have an area of not greater than

ten percent (10%) of its floor area for the sale or rental of pornographic materials, provided such area and materials are reasonably hidden from public view and such materials are not advertised anywhere in the Shopping Center, the media or the applicable premises) or other immoral uses billiard room (but this shall not prevent the incidental operation of billiard tables as part of a restaurant or other operation permitted hereunder), game arcade or amusement center (but this shall not prevent the incidental operation of video or other electronic games as part of an operation permitted hereunder), a facility for the sale of paraphernalia for use with illicit drugs, an off-track betting parlor, a facility for the sale of new or used motor vehicles, trailers or mobile homes. In no event shall any portion of the Shopping Center be used or operated for any use or purpose which is not consistent and compatible with a neighborhood shopping center.

3.3 Each Owner shall maintain insurance which includes a provision adequate in substance and amount to provide for removal of all damaged Improvements and clearing and restoring of the Property after casualty.

3.4 Declarant Approval of Improvements. With the exception of any construction or improvement project undertaken by the Declarant, no Improvement shall be constructed, placed or assembled on any Lot by an Owner or tenant until the Declarant has first approved the project, in writing, with respect to the exterior design, size, appearance, location exterior materials and colors thereof. Before commencing any work of Improvement or applying for any governmental permit or approval with respect thereto, an Owner shall make a submission to, and receive approval from, the Declarant in accordance with Article IX, below.

#### Article IV Grant of Easements

4.1 Upon the conveyance by Declarant of any of the Parcels contained in the Property, there shall hereby be created for the benefit of the Declarant and all future Owners of the Parcels within the Property, the following easements which shall terminate concurrently with the termination or expiration of this Declaration

a) a non-exclusive reciprocal easement on, over, through and across any of the paved portions of any of the Parcels for the purpose of (i) vehicular ingress and egress to any other Parcels and to adjoining streets and driveways on any portion of the Parcels designated from time to time for such ingress and egress, and (ii) parking on any portion of the Parcels designated from time to time for vehicular parking; and

b) a non-exclusive, reciprocal easement for pedestrian access on, over, through and across the sidewalks, walkways, exits and entrances situated from time to time on such Parcel.

4.2 Each of the Owner's grants to the other Owner's and their respective Permittees, and successors and assigns a non-exclusive easement for the location of underground utilities as now exist in the Hillside Shopping Center.

ARTICLE V  
Maintenance

5.1 Maintenance Obligation. Subject to the provisions of Article 5.2 below, each Owner of each Lot shall have the responsibility and obligation for maintaining all Common Area located on the Owner's Lot. Each Owner shall have the obligation and responsibility to maintain such portions of their Lot in a good condition for maintenance and repair, in conformance with all covenants, conditions and restrictions affecting the Property and all Governmental Regulations, and in a manner which is not inconsistent with the terms and provisions of this Declaration. Such maintenance obligations shall include, but not be limited to the following:

i) Maintaining the surfaces at such grades and levels so that the same may be used and enjoyed as contiguous and homogeneous common areas, and maintaining said surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed, or of equal or better quality, use and durability;

ii) Removing all papers, debris and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep said areas in a neat, clean and orderly condition;

iii) Placing, keeping in repair, and replacing any necessary or appropriate directional signs, striping markers and lines; and operating, keeping in repair, and replacing, when necessary, all paved parking areas and sidewalk areas, ADA paths of travel, and such artificial lighting facilities as shall be reasonably required;

iv) Maintaining any perimeter walls in good condition and state of repair;

and

v) Maintaining all areas of perimeter landscaping, making such replacements of shrubs and other landscaping as is necessary and keeping said areas at all times adequately weeded, fertilized and watered.

In performing the maintenance obligations required hereunder, an Owner shall not substantially or totally interfere with access to or from a Lot, or prevent parking on a Lot for an unreasonable period of time and shall perform such maintenance and construction activities on the Common Area located on its Lot in conformance with any covenants, conditions and restrictions of record and other Governmental Regulations.

5.2 Managed Maintenance; Designation and Succession of Maintenance Manager. Notwithstanding Article 5.1 above, and in order to facilitate the performance of the Owners' maintenance obligations thereunder, a maintenance "Manager" ("Manager" or "Maintenance Manager") shall be designated for the purpose of coordinating the performance and discharge of such maintenance obligations. Declarant shall initially serve as Manager and shall continue to serve in such capacity so long as Declarant or a successor-in-interest to Declarant is the Owner of any of the Lots; provided, however, that Declarant shall have the right, at its sole and absolute discretion at any time, to cease serving in the capacity of Manager. If Declarant or any successor-in-interest to Declarant ceases to be an Owner of any of the Lots, or if Declarant elects to cease serving in the capacity of Manager, the successor Manager shall be any person or entity appointed by the vote of the Owners owning not less than seventy-five percent (75%) of the gross acreage of the Lots. In the event the duties, obligations, rights and remedies of the Manager are at any time assumed by a successor Manager, such assuming Manager shall be deemed to be the "Manager" for all purposes herein and the Manager being so replaced shall cooperate fully with

such assuming Manager so that the transition between Managers shall be accomplished in a timely and efficient manner. If, at any time, neither Declarant nor any person or entity appointed by the Owners is functioning as Manager, each Owner shall be responsible for maintaining the Common Area located on the Owner's Lot.

5.3 Removal of Maintenance Manager. The right to remove the Manager shall be and is hereby vested solely in Declarant until such time as Declarant is no longer the Owner of any of the Lots. Thereafter, the Manager shall be removed by the vote of the Owners owning not less than seventy-five percent (75%) of the gross acreage of the Lots.

5.4 Rights and Duties of Maintenance Manager. The Manager shall be responsible for coordinating the maintenance of the Common Area and collecting the Maintenance Assessments (as hereinafter defined). In performing these obligations, the Manager has the right and authority to enter into contracts with one or more property management companies to perform any or all of the services required to be rendered hereunder with respect to the Common Area, to engage contractors, gardeners or other service providers to perform same, to employ and pay wages to agents and/or employees for performance of any or all of said maintenance services, and to enter upon each Lot for the purpose of performing and discharging its maintenance duties pursuant to the easement granted herein. The Manager shall have the right and authority to incur costs in connection with the maintenance of the Common Area, including the cost of insurance for the Common Area, and to assess maintenance fees with respect to said costs in accordance with the terms herein. The Manager shall also have the right and authority to record liens for delinquent payments of Maintenance Assessments.

5.5 Establishment of Maintenance Assessment. Declarant, so long as it owns any of the Lots, hereby covenants, and each Owner of such Lots by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay Maintenance Assessments for the purpose of maintaining the Common Area. The Maintenance Assessments levied hereunder, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Maintenance Assessment is made. Each such Maintenance Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Maintenance Assessment fell due. If more than one person or entity was the Owner of a Lot, the personal obligation to pay such Maintenance Assessment shall be both joint and several.

5.6 Purpose of Maintenance Assessment. The Maintenance Assessments levied by the Manager shall be used exclusively to pay all costs incurred by the Manager in connection with the maintenance of the Common Area, including, but not limited to: costs associated with any property management company employed to supervise the maintenance of the Common Area and to collect the Maintenance Assessments hereunder (which property management company may be affiliated with Declarant or any other Owner); wages and expenses of any agent or employee hired by the Manager to supervise or maintain the Common Area; costs incurred in purchasing any equipment or supplies required to perform such supervision or maintenance; any and all costs incurred in collecting Maintenance Assessments or enforcing liens related thereto; expenses incurred in maintaining the books and record with respect to the maintenance of the Common Area as required hereinbelow; and any insurance costs incurred by the Manager relating to the Common Area.

5.7 Payment of Maintenance Assessments. At least every twelve (12) months, but no more frequently than once a month, the Manager shall send to each of the Owners a statement

setting forth the actual cost and expenses paid by the Manager for the operation and maintenance of the Common Area and such Owner's pro rata share of such maintenance cost. Manager shall also have the right to submit monthly statements based upon estimated amounts, subject to annual reconciliations. Each Owner shall submit its share of the maintenance costs within ten (10) days after receipt of such statement. If, after receipt of such billing statement, any Owner shall fail to pay when due the amounts specified in such statement, the Manager shall deliver to such non-paying Owner, a second copy of such billing statement, together with a written notice stating that the billing amount is unpaid and that interest will begin to accrue unless payment is made within ten (10) days after the effective date of such written notice. If, at the end of ten (10) days after the effective date of such written notice, the billing amount or a portion thereof remains unpaid, the Manager shall be entitled to interest on such unpaid amount at the lesser of five percent (5%) over the rate of the Federal Reserve Bank of San Francisco on the twenty-fifth (25th) day of the month prior to the date said unpaid amount was due or the maximum rate allowed by law, commencing on the date of the original billing statement and continuing until paid. Any such unpaid amount, together with interest on the outstanding amounts, shall be a lien against the Lot, which lien shall attach and be enforced as provided in Article 7 below.

5.8 Management Fee. The Manager may charge a management fee to cover its own or other expenses not to exceed five percent (5%) of the cost and expenses incurred in operating and maintaining the Common Area, except the cost and expenses paid by the Manager to a third party management company in performing the Manager's administrative obligations hereunder and the costs of property taxes assessed against the Common Area.

5.9 Allocation of Maintenance Fees. An Owner's pro rata share of the Maintenance Assessments shall be fixed based upon the proportion of Floor Area of Improvements actually then built within the land owned by each Owner in relationship to the total Floor Area of Improvements actually then built on all of the Lots. In the event of the resubdivision of any Lot, the Maintenance Assessments shall be allocated to such resubdivided Lot based upon the number of square feet of Floor Area of the Lots.

5.10 Liability. The Manager shall not be liable to any Owner or to any other party for any damage, loss or liability suffered or claimed on account of any act, omission or negligence of the Manager with respect to any such person or entity so long as the Manager has acted in good faith without intentional misconduct or fraud on its part.

## ARTICLE VI Duration, Modification and Amendment

6.1 This Declaration may be amended with the written approval of the Owners of not less than 75% of the gross acreage of the Lots.

6.2 Unless sooner terminated pursuant to Section 5.2, this Declaration shall terminate and expire fifty (50) years from the date hereof, unless extended with the written approval of all Parties; provided that the Cross-Access Easements shall not terminate and shall continue in full force and effect unless modified or terminated upon the prior written approval of all Parties.

6.3 No termination, extension, or amendment will be effective until a written instrument setting forth the terms of the termination, extension, or amendment has been executed

and acknowledged by the required Parties and recorded in the Office of the Clerk and Recorder of Salt Lake County, Utah.

ARTICLE VII  
Mutuality and Enforcement

7.1 The covenants and restrictions granted or created by this Declaration are appurtenant to the applicable Lots which they benefit or burden. These covenants and restrictions shall run with the land, shall be binding upon and inure to the benefit of the Parties and their successors and assigns. For purposes of this Declaration, the Lot burdened by a covenant or restriction shall be the servient estate and every Lot which is benefited by the covenant or restriction shall be the dominant estate. These covenants and restrictions shall create mutual benefits and servitudes upon each Lot.

7.2 In the event of any violation or threatened violation of any of a covenant or restriction, any Party may enforce the covenant or restriction. In the enforcement of a covenant or restriction, such Party will have, in addition to the right to recover damages and reasonable attorney's fees, the additional right to bring an action in a court of competent jurisdiction to enjoin the violation or threatened violation.

7.3 Collection of Assessments and Enforcement of Lien.

(a) Delinquent Assessments. If any Owner fails to pay the Maintenance Manager any Regular, Special or Special Individual Assessment duly imposed pursuant to this Article VII, on or before the due date, the same shall be deemed delinquent. If any such Assessment is not paid within ten (10) days after delivery of notice of such delinquency from the Maintenance Manager, a late charge of ten percent (10%) of the delinquent Assessment shall be levied and the Assessment shall bear interest from the delinquency date at the rate of ten percent (10%) per annum.

(b) Establishment of Assessment Lien. Any and all delinquent amounts, together with said interest costs and reasonable attorneys' fees, shall be a personal obligation of the Owner required to pay such sums and shall become a lien and charge upon the delinquent Owner's Lot from and after the time the Maintenance Manager causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state: (i) the amount of the delinquent Assessment, (ii) a legal description of the Owner's Lot; (iii) the name and address of the record Owners of the Lot and in order for the lien to be enforced by nonjudicial foreclosure, as provided below, (iv) the name and address of the trustee authorized by the Maintenance Manager to enforce the lien by sale.

(c) Remedies for Maintenance Manager to Collect Assessments. The Maintenance Manager may bring an action at law against the Owner obligated to pay any delinquent Assessments and other sums described in Article V and/or VII or, subject to the limitations set forth below, foreclose the lien against such Owner's Lot within the Property. Foreclosure may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to Utah Civil Code. Any sale of a Lot by a trustee acting pursuant to this Section shall be conducted in accordance with those Utah Civil Code sections applicable to the exercise of powers of sale in mortgages or deeds of trust. In the event the Maintenance Manager proceeds under the power of sale, the lien shall be deemed to secure interest, reasonable attorneys' fees and costs incurred by the Maintenance Manager in so proceeding.

(d) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Maintenance Manager by recording a Notice of Default, which notice shall state: (i) all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon; (ii) the amount of any Assessment which is due and payable although not delinquent; (iii) a legal description of the property with respect to which the delinquent Assessment is owed; and (iv) the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall also state the election of the Maintenance Manager to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for any required notice of default under applicable Utah Civil Code.

(e) Conduct of Foreclosure Proceedings. The Maintenance Manager shall have the rights conferred by applicable Utah Civil Code to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes, the Maintenance Manager shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Maintenance Manager shall be entitled to employ the services of a title insurance company or other responsible person authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Maintenance Manager in commencing and prosecuting any nonjudicial foreclosure hereunder.

(f) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Maintenance Manager, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

7.4 Transfer of Lot by Sale of Foreclosure. The following rules shall govern the right of the Maintenance Manager to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Maintenance Manager can continue to foreclose its lien in spite of the change in ownership.

(b) The Maintenance Manager's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any deed of trust or mortgage or lien Recorded against the Lot at any time prior to Recordation of the Maintenance Manager's Assessment lien.

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the deed of trust, mortgage, other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Lot covered by subparagraph (b), above, shall be



deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Maintenance Manager's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

## ARTICLE VIII Parking

8.1 The Shopping Center shall comply with the City governmental regulations and the parking requirements of the Drug Store Lease, Grocery Store Lease and the Existing CC&R's. No Owner will take any action to reduce the parking ratio below the governmental requirements. Each Owner shall provide such parking as is necessary such that all parking required for each parcel shall be contained within in its own parcel, unless an agreement or easement for the sharing of parking is approved in writing by the Owners. All parking spaces for the Shopping Center shall be used for the non-exclusive benefit of Owners, their successors-in-interest, assignees, tenants, customers and business invitees and the customers, employees and business invitees of their tenants at the Shopping Center. No Owner, tenant or other party with an interest in all or any part of the Shopping Center shall charge or exact any fee or other compensation in connection with parking at the Shopping Center by Owners, their successors-in-interest, assignees, tenants, customers and business invitees and the customers, employees and business invitees of their tenants. Parking at the Shopping Center shall be subject to such further rules and regulations (to the extent consistent with operation of a first-class shopping center) concerning parking at the Shopping Center as the Manager shall promulgate from time to time.

## ARTICLE IX ARCHITECTURAL AND LANDSCAPING CONTROL

9.1. Requirement of Architectural Approval, Generally. Except as otherwise provided in Section 9.12, below (exemption for Declarant Improvements), no Improvement shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on any Lot within the Property or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by the Declarant. All plans and specifications required by Section 9.1 shall be submitted in writing for approval together with a reasonable processing fee to be established by the Declarant. The address of the Declarant is as provided in Section 10.6, below.

Once a proposed work of Improvement has been duly approved by the Declarant, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Declarant. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Declarant, in its discretion, may order the Owner and/or the Owner's contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of Declarant that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Declarant shall be entitled to exercise the enforcement remedies specified in Section 9.9, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement by "red tagging" the project until such time as proper Declarant review and approval is obtained.

9.2. Basis for Approval of Improvement Projects. When a proposed Improvement is submitted to the Declarant for review, the Declarant shall grant the requested approval only if the Declarant, in its sole discretion, makes the following findings regarding the proposed project:

- (a) Intentionally Deleted;
- (b) The Improvement will be in harmony with the external design and aesthetic beauty and appearance of other structures and/or landscaping within the Property; and
- (c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property and will not adversely affect the location and use of Improvements on neighboring Lots.

While it is recognized that the Declarant's determination will, of necessity, be subjective to some degree, the Declarant shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, and the proposed location of the Improvement in relation to the existing topography, finished grade elevations, roads, Common Areas and other existing structures.

In approving a request for construction of an Improvement, the Declarant may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

9.3. Intentionally Deleted

9.4. Failure to Approve or Disapprove Plans and Specifications. In the event the Declarant, or its representatives designated in accordance with Section 9.6, below, fails to either approve or disapprove such plans and specifications within forty-five (45) days after the same have been submitted to it, it shall be conclusively presumed that the Declarant has denied approval to such plans and specifications, in which case the Owner-applicant can reapply to the Declarant. All improvement work approved by the Declarant shall be diligently completed and constructed in accordance with approved plans and specifications.

9.5. Intentionally Deleted.

9.6. Delegation. The Declarant may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of said Declarant with respect to all matters delegated.

9.7. No Liability. Neither the Declarant, or the agents, officers, directors, members or designated representatives of Declarant shall be liable for any damage, loss or prejudice suffered or claimed on account of anyone submitting plans, drawings and/or specifications to them for approval, or to any Owner or any other person or entity affected by this Declaration, by reason of

mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove, of any such plans, drawings and/or specifications, or for any defect in any structure constructed from such plans, drawings and/or specifications. Such plans, drawings and/or specifications are not approved by the Declarant for engineering design. Every person who submits any plans, drawings and/or specifications to the Declarant for approval, and every Owner and every other person or entity affected by this Declaration, agrees that he or she will not bring any action or suit against the Declarant, the Declarant, the Maintenance Manager or any of the members or designated representatives of such parties to recover any such damages.

**9.8. Inspection of Works of Improvement.** The Declarant may, from time to time, at any reasonable hour or hours upon reasonable notice, enter and inspect any Lot subject to the jurisdiction of the Declarant as to its compliance with the provisions of this Declaration.

**9.9. Notice of Noncompliance and Other Enforcement Remedies.**

(a) **Completion of Improvement Projects.** After commencement of construction of any Improvements that have been approved by the Declarant, the responsible Owner shall diligently prosecute the same to completion, so that such Improvements shall not remain in a partially finished condition any longer than reasonably necessary for completion thereof. The Declarant may impose reasonable deadlines for the completion of specific projects. Upon completion of the project, the Owner shall notify the Declarant, which shall have thirty (30) days in which to inspect the Improvement to confirm that it has been constructed in accordance with approved plans and specifications. If a Notice of Noncompliance is issued by the Declarant within that thirty (30) day period, the notice shall specify those elements of the project that are not in compliance. The Owner shall then have another thirty (30) days, or such longer period as may be approved by the Declarant to bring the project into compliance.

(b) **Stop Work Orders.** In addition to other enforcement remedies set forth in this Declaration, the Declarant shall have the authority to order an abatement ("**red tag**") of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Declarant or if it does not conform to the plans and specifications submitted to and approved by the Declarant. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.

(c) **No Waiver.** No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work.

(d) **Effect of Failure to Remedy Noncompliance.** If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification (or such longer period as may be approved by the Declarant), the Declarant or any other Owner shall have the authority to seek enforcement of the requirements of this Declaration and the Design Guidelines through any appropriate proceeding at law or in equity. If an Owner believes that an Improvement project being prosecuted by the Owner has been red tagged without justification, the Owner shall so notify the Declarant in writing. Upon receipt of such notification, the Declarant shall promptly arrange a meeting with the Owner and his or her contractor to discuss the alleged noncompliance in an effort to resolve the matter so that construction may continue.

(e) Attorneys' Fees and Costs. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

9.10. Variances. The Declarant, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article or any minimum construction standards specified either this Declaration or the Design Guidelines, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships. Any grant of a variance shall be supported by a resolution of the Committee containing findings as to why the variance is justified under the circumstances presented. The Committee's resolution may also contain conditions which the applicant must honor if the variance is to remain in effect or require, as a condition of approval, that the consent of neighboring Owners be obtained. The Design Guidelines may contain additional procedures and/or criteria relating to requests for approval of variances.

9.11. Intentionally Deleted.

9.12. Nonapplicability of Approval Process to Declarant Improvement Projects. The provisions of this Article shall not apply to any Lot owned by Declarant prior to the date upon which the City issues an Occupancy Certificate, or the substantial equivalent thereof, with respect to the Improvements to be constructed on such Lot by Declarant or to any work of improvement undertaken by the Declarant in the Common Area.

9.13. Compliance With Governmental Regulations. Review and approval by the Declarant of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desires to construct, install, or modify the Improvement.

## ARTICLE X Miscellaneous

10.1 If any clause, provision, or portion of this declaration is or becomes illegal, unenforceable, or void for any reason, or is declared by a court of competent jurisdiction to be so, the remaining provisions of this Declaration shall continue in full force and effect.

10.2 Nothing contained in this Declaration shall be deemed to be a gift or dedication of any Lot or portion of the Property to the public, or for any public purpose.

10.3 Nothing contained in this Declaration shall be deemed to create a partnership or joint venture between the Parties or any of them or between any Owner of Permittee of any portion of the Property.

10.4 Each Party agrees that upon written request of another Party, it will issue to a prospective mortgagee of or prospective successor to such other Party, an estoppel certificate stating:

(a) Whether the Party to whom the request has been directed knows of any default by the requesting Party under the Declaration, and if there are known defaults, specifying the nature of the default;

(b) Whether to its knowledge this Declaration has been modified or amended in any way (and if it has, then stating the nature thereof); and

(c) That to the Party's knowledge this Declaration is in full force and effect as of that date.

10.5 This Declaration shall be governed by, and shall be interpreted in accordance with the laws of the State of Utah.

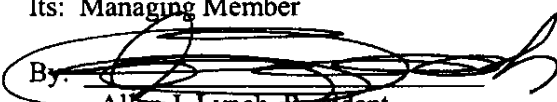
10.6 Any notice or demand required or permitted under this Declaration shall be in writing and be personally delivered, sent by facsimile or other wire transmission (with assurance of receipt in a manner typical for communication of that type), sent by express delivery with all applicable shipping charges prepaid, or mailed, certified or registered with all postage prepaid, to the Person to whom the notice is directed. In the case of mailing, notice shall be effective three (3) days after deposit in the U.S. Mail except as provided below, notice shall be served at the address of any portion of the Property owned or occupied by the Person to whom the notice is directed, or, if no such address is available, then at the last known address of the Person being served. However, any Owner may change its address for notice hereunder by recording such address against the records of its Parcel and sending such address change to all owners of the Shopping Center:

Lot1  
Hillside Plaza Partners, LLC  
c/o Doerken Properties, Inc.  
1448 15<sup>th</sup> Street, Suite #100  
Santa Monica, California 90404  
Attn: Allen J. Lynch, President

Lot2  
Hillside Plaza Partners, LLC  
c/o Doerken Properties, Inc.  
1448 15<sup>th</sup> Street, Suite #100  
Santa Monica, California 90404  
Attn: Allen J. Lynch, President


In witness whereof, the Parties have executed this Declaration on the date specified below.

Owner of Lot 1:  
HILLSIDE PLAZA PARTNERS, LLC  
A Delaware limited liability company  
By: Doerken Properties, Inc.,  
Its: Managing Member

By:   
Allen J. Lynch, President

Date: April 4, 2006

Owner of Lot 2:  
HILLSIDE PLAZA PARTNERS, LLC  
A Delaware limited liability company  
By: Doerken Properties, Inc.,  
Its: Managing Member

By:   
Allen J. Lynch, President

Date: April 4, 2006

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California   }  
  }ss.  
County of Los Angeles    }

On April 5, 2006, before me, Amy Lee Grande, Notary Public, personally appeared Allen J. Lynch, personally known to me or proved to be on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to be that he/she/they executed the same in his/her/those authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*Amy Lee Grande*  
\_\_\_\_\_

**EXHIBIT "A"**

**Legal Description**

Lots 1 and 2 of the Hillside Plaza Subdivision, recorded January 18, 2006, as Entry No. 9613132 in Book 2006P at Page 15, in the office of the Salt Lake County Recorder.

Parcel #'s	22-27-201-026
	22-27-201-027
	22-27-201-028
	22-27-201-029
	22-27-201-030
	22-27-201-031
	22-27-201-032
	22-27-201-033
	22-27-201-034

**CONSENT AND JOINDER**

The undersigned, Protective Life Insurance Company, a Tennessee corporation ("Mortgagee"), as the holder of that certain Deed of Trust, Security Agreement and Fixture Filing Financing Statement (the "Mortgage") dated August 1, 2003, and recorded on August 18, 2003, as Entry No. 8777949 in Book 8864, Page 3398, in the Office of the Recorder for Salt Lake County, Utah, hereby consents to and joins in the Declaration of Covenants, Easements, and Restrictions, attached hereto (the "Easement").

IN WITNESS WHEREOF, the undersigned has executed and delivered this Consent and Joinder as of the 24<sup>th</sup> day of July, 2006.

Protective Life Insurance Company

By: Charles M. Prior

Its: Vice President, Investments

Attest:

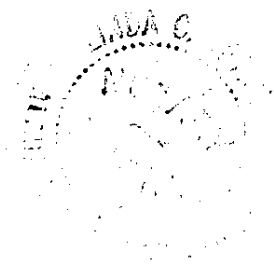
By: Natalie R. Reed

Its: Assistant Secretary

STATE OF ALABAMA )  
 )  
COUNTY OF JEFFERSON )

On July 24, 2006, before me, Linda C. Gerstein, personally appeared Charles M. Prior, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Signature Linda C. Gerstein (Seal)

My Commission Expires: April 2, 2010