

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CRP/PDC SLC S. 4400 WEST OWNER, L.L.C.
450 Newport Center Drive, Suite: 405
Newport Beach, California 92660

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1/29/2021 8:53:00 AM \$40.00
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RASHELLE HOBBS
Recorder, Salt Lake County, UT
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made and effective as of JANUARY 28, 2020 ("**Effective Date**") by CRP/PDC SLC S. 4400 WEST OWNER, L.L.C., a Delaware limited liability company ("**Declarant**") with reference to the following facts:

RECITALS:

A. Declarant is the owner of that certain real property located in Salt Lake City ("**City**"), County of Salt Lake ("**County**"), in the State of Utah, depicted on the Site Plan attached hereto as **Exhibit "A"** and more particularly described on **Exhibit "B"** attached hereto (the "**Real Property**").

B. The Real Property is comprised of multiple separate legal parcels (each a "**Parcel**" and collectively the "**Parcels**"). Declarant intends to develop the Parcels as a set of single and multi-tenant industrial warehouse/logistics buildings for office and warehousing (the "**Project**").

C. To ensure that the Project adequately operates as an industrial development, Declarant desires to establish certain cross-easements between the Parcels and to place certain restrictions on the Project, and to provide certain operational and cost sharing mechanisms for the orderly operation of the Project.

AGREEMENT:

NOW, THEREFORE, in consideration of the above Recitals, and the covenants and conditions herein contained, Declarant does declare, create and establish the following easements and restrictions affecting the Project:

ARTICLE I DEFINITIONS

1.1 "**Applicable Laws**" means, collectively, all laws, statutes, ordinances or other rules, regulations or requirements of any Governmental Authority (as hereinbelow defined) now in force or which may hereafter be enacted or promulgated, including, without limitation the

Americans with Disabilities Act of 1990 and the conditions of approval issued by the City in connection with the development of the Project.

1.2 “**Approved Plans**” means the approved Site Plan, architectural elevations, exterior materials and colors, landscaping, sign program, if any, and grading.

1.3 “**Building**” means any permanently enclosed structure placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any building appurtenances such as stairs leading to or from a door, emergency generators, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps and other outward extensions of such structure.

1.4 “**Claims**” means each and every action, right, loss, cost, claim, obligation, damage, liability, demand, payment, fine, penalty, cause of action at law or in equity, defense, proceeding, injury, judgment (including expert witness fees and reasonable attorneys’ fees awarded as part of a judgment), lien, cost or expense, including, but not limited to, reasonable attorneys’ fees and other litigation expenses.

1.5 “**Common Areas**” that portion of the Project designated as non-exclusive and for the common use of all Permittees (as hereinbelow defined) of the Project, including, among other facilities, parking areas, driveways, access roads, fire lanes, walkways, sidewalks, landscaping, loading areas (not exclusively serving one Occupant), private streets and alleys, lighting facilities, common utility lines, and drainage areas, but excluding any Permitted Building Area (as hereinbelow defined). Common Areas shall include, but shall not be limited to, all walls, fences, sidewalks, entrances and exits to and from the Project, landscaping and lighting facilities, above and below-grade stormwater detention or retention facilities located within the Project and such additional common facilities as may now or hereafter be established and constructed upon any portion of the Project for the purposes for which they are provided and intended. Declarant shall have the right at any time, subject to compliance with the limitations set forth in this Declaration, to modify the Common Areas on any Parcel which Declarant owns.

1.6 “**Common Area Maintenance**” is defined in Section 5.2 below.

1.7 “**Common Area Maintenance Costs**” is defined in Section 5.4(a) below.

1.8 “**Declarant**” means the party first set forth above in the Preamble, or any successor to which it shall have assigned (in its sole discretion) any of its rights by an express written assignment recorded in the Official Records. As used herein, “successor” means a Person (as hereinbelow defined) who acquires Declarant or substantially all of Declarant’s assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise or succeeds to Declarant’s right, title and interest as “Declarant” pursuant to an express written assignment as set forth above or forecloses on Declarant’s right, title and interest in or to the Real Property. At such time as such original Declarant sells or transfers its last fee ownership interest in any Parcel located within the Real Property to an unaffiliated third party (the “**Final Transfer**”), the transferee of the Final Transfer and its successors and assigns (the “**Transferee**”) shall be the Declarant for purposes hereof subject to the terms and conditions of any existing Mortgage (as hereinbelow defined), provided that the Transferee (i) is acquiring all

of the Real Property from Declarant or from a combination of Declarant and every other Owner, and (ii) upon the Final Transfer, assumes all of the outstanding obligations under such existing Mortgage. If the Transferee is not acquiring all of the Real Property, then upon the Final Transfer, all of Declarant's undelegated rights, duties, and obligations under this Declaration shall be delegated to, and assumed by, the designated Manager subject to the terms and conditions of any existing Mortgage, except that the Owners shall assume, and be liable for the repayment of, such existing Mortgage pursuant to the terms and conditions thereunder. In the event there is no designated Manager at the time of the Final Transfer, Declarant shall remain Declarant until the Owners designate a Manager in accordance with this Declaration, provided that the Owners shall (x) upon the Final Transfer, assume, and be liable for, the repayment of, any existing Mortgage pursuant to the terms and conditions thereunder, and (y) designate a Manager no later than thirty (30) days after the consummation of the Final Transfer. Any designation of a successor Declarant pursuant to the above shall be memorialized by the designating Declarant's recording of a notice in the Official Records (as hereinbelow defined) setting forth the identity and notice address of the successor Declarant.

1.9 **"Driveways"** is defined in Section 3.1 below.

1.10 **"Environmental Laws"** means any and all federal, state or local laws, statutes, ordinances, rules, orders, permits, standards or requirements, together with all related amendments and implementing regulations, and all common law, relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, industrial hygiene or unsafe conditions including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act and all regulations adopted in respect to the foregoing laws, all as previously amended and in the future to be amended.

1.11 **"BOMA Industrial Measurement"** means the area computed pursuant to the Building Owners and Managers Association International 2019 for Industrial Buildings: Standard Method of Measurement (ANSI/BOMA Z65.2-2019).

1.12 **"Governmental Authority"** means any federal, state, county, city, or local governmental or quasi-governmental authority, entity, or body (or any departmental agency thereof) with jurisdiction over the Project.

1.13 **"Hazardous Materials"** means any flammable explosives, hydrocarbons and/or petroleum products or fractions thereof, radioactive materials, hazardous or toxic wastes, substances or materials, including, but not limited to, those materials and substances which may now or hereafter be defined as "hazardous substances", "hazardous materials", "hazardous wastes" or "toxic substances", "regulated substances", "industrial solid wastes", or "pollutants" under Environmental Laws.

1.14 **"Improvements"** means all Buildings, outbuildings, structures and other improvements which are adjoining, appurtenant or integral to any such structure and are

designed for the use of an Owner (as hereinbelow defined) or Occupants (as hereinbelow defined) thereof, including, but not limited to, signs, plantings, shadow boxes, flower boxes or other planting containers, fences, walls, sign standards, beams, retaining walls, fountains, utility poles and utility lines, lighting standards, adjoining yards, courtyards, courts, sidewalks, walkways, pedestrian bridges, stairways, outdoor eating or display areas and any above-ground enclosures or facilities and all other above-ground structures of any kind whatsoever, excluding roadways, Driveways (as hereinbelow defined), and curbs.

1.15 “**Indemnify**” means indemnify, protect, hold harmless and defend with counsel designated by the insurer charged with the obligation to defend (or if no insurer is involved, with counsel reasonably acceptable to the Owner [as hereinbelow defined] being defended).

1.16 “**Land Area**” means the aggregate gross square footage of land contained within any Parcel or group of Parcels.

1.17 “**Manager**” means the Person designated to be responsible for the operation and maintenance of the Project, as provided, and more specifically set forth, throughout this Declaration.

1.18 “**Maximum Building Area**” means, with respect to each Parcel, the maximum BOMA Industrial Measurement of the Building which can be constructed or reconstructed on such Parcel as set forth in **Exhibit “A”**. Subject to Section 10.4 herein, Declarant shall have the right at any time to record an amendment to this Declaration modifying the Maximum Building Area on any Parcel owned by Declarant or any affiliate of Declarant. Declarant shall promptly notify all other Owners of any such modification.

1.19 “**Minimum Parking Requirements**” shall mean not less than that parking ratio required by Applicable Laws.

1.20 “**Occupant(s)**” means any tenant, subtenant, licensee, concessionaire, or other party occupying or having the right to occupy all or any portion of any Parcel, other than agents, contractors, subcontractors, and Permittees.

1.21 “**Official Records**” means the official records of the County.

1.22 “**Owner(s)**” means any Person or entity who or which is the record owner of fee simple title to a Parcel and the Improvements thereon. An Owner transferring all or any portion of its fee interest in a Parcel shall give notice (in conformity with the provisions of Section 10.7 below) to all other Owners and Declarant and the Manager, if any, of such transfer and shall include in such notice (a) the name and address of the new Owner and (b) a copy of the legal description of the real property transferred by such Owner. Each Owner shall be liable for the performance of all covenants, obligations and undertakings under this Declaration applicable to the Parcel or portion thereof owned by it that accrue during the period of such ownership. The transferring Owner shall be released from all obligations pertaining to the portion of the Parcel transferred arising subsequent to the date of recordation in the Official Records of a deed evidencing such transfer. If a Parcel is owned by more than one Person, the Person holding the majority ownership interest in such Parcel shall be designated as the Person to represent all

Owners of the Parcel and such designated Person shall be deemed the Person authorized to give consents and/or approvals pursuant to this Declaration for such Parcel; provided that if the ownership interests in such Parcel are equal, the Persons owning such Parcel shall designate one Person to represent all Owners of the Parcel for the purposes of giving consents and approvals as provided above. Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is recorded against the transferred portion of the Real Property prior to receipt of such notice of transfer by the Owner filing such lien.

1.23 “**Parcel**” means any individual legal parcel within the Real Property.

1.24 “**Parking Areas**” is defined in Section 3.1 below.

1.25 “**Permittees**” means any Occupant, together with their respective, employees, agents, contractors, subcontractors, clients and invitees.

1.26 “**Permitted Building Area**” means those areas within the Project which are designated as such on the Site Plan, and within which Buildings and Improvements are permitted to be located, constructed, reconstructed, and/or replaced under this Declaration. Subject to Sections 1.33 and 10.4 herein, Declarant shall have the right at any time to record an amendment to this Declaration modifying the Permitted Building Area on any Parcel owned by Declarant or any affiliate of Declarant. Declarant shall promptly notify all other Owners of any such modification and provide a copy of the revised Site Plan.

1.27 “**Person**” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

1.28 “**Prime Rate**” means, as of a particular date, the prime rate of interest as published on that date in the *Wall Street Journal*. If the *Wall Street Journal* is not published on a date for which the Prime Rate must be determined or is no longer being published, Declarant shall select an alternative comparable and reputable publication or website to determine the Prime Rate.

1.29 “**Proportionate Share**” means, with respect to an Owner of a Parcel, a percentage, the numerator of which equals the number of square feet of Land Area within such Parcel and the denominator of which is the total number of square feet of Land Area within all of the Parcels within the boundaries of the Real Property.

Additionally, notwithstanding the foregoing, in any instance where an Owner or Occupant of any portion of the Project (for convenience, referred to herein as a “**Stand Alone Occupant**”) (a) at its expense, separately maintains any portion of the Common Areas, or (b) maintains its own insurance for its Building (including all tenant improvements) and/or a portion of the Common Areas, the Land Area of such Stand Alone Occupant’s Parcel(s), as applicable, shall be excluded from the denominator of the fraction utilized to calculate the Proportionate Share of the other Owners for the particular item(s) separately paid or performed by any such

Stand Alone Occupant; provided, however, each Stand Alone Occupant shall be required to pay a Proportionate Share of any costs associated with commercial general liability insurance maintained by Declarant or Manager, if any, for the Common Area, common utilities, the industrial pump lift station servicing the Real Property, and any other costs shared in common with other Owners or Occupants that are not separately paid for by the Stand Alone Occupant.

1.30 **“Proportionate Tax Share”** means, with respect to a given Owner, (i) as to the portion of any tax bill calculated with respect to the Improvements covered by such tax bill, the ratio of the square footage of such Improvements lying within such Owner’s Parcel to the total square footage of the Improvements covered by such tax bill, and (ii) as to the balance of the Real Estate Taxes (as hereinbelow defined) shown on such tax bill, the Owner’s Proportionate Share of such Real Estate Taxes. Notwithstanding anything contained in this Section 1.31 to the contrary, if the Manager reasonably determines that the Improvements comprising the premises occupied by any Occupant has a value greater than the value of the majority of the other premises on the Real Property or within the land covered by the applicable tax bill, the Manager shall have the right to make such reasonable adjustments to such Occupant’s Proportionate Tax Share so that said Occupant will pay Real Estate Taxes on the value of the Improvements comprising the premises which is in excess of the value of the majority of other premises in the Real Property or within the land covered by the applicable tax bill. In the event a Stand Alone Occupant separately pays (or is required to pay) its portion of any tax bill applicable to the Improvements covered thereby, the square footage of the Improvements lying within the Parcel of the Stand Alone Occupant shall be removed from the total square footage covered by such Improvements when calculating the ratio of the tax bill applicable to other Owners. In the event a Stand Alone Occupant separately pays (or is required to pay) the balance of the Real Estate Taxes for its Parcel(s), Building and/or a portion of the Common Areas, the Land Area of such Stand Alone Occupant’s Parcel(s), as applicable, shall be excluded from the denominator of the fraction utilized to calculate the Proportionate Share of the other Owners for the particular item(s) separately paid or performed by any such Stand Alone Occupant. Notwithstanding the above, if the taxing authority designates or assigns values to any specific Improvements, such valuation shall control for purposes of determining the affected Owner’s Proportionate Tax Share prior to separate parcelization.

1.31 **“Proportionate Vote”** means the vote of an Owner which is equal to its Proportionate Share.

1.32 **“Real Estate Taxes”** means (i) ad valorem real estate taxes assessed by any Governmental Authority attributable to the Owner’s Parcel, and (ii) any other such taxes, charges, and assessments, which are levied with respect to an Owner’s Parcel, including any Buildings or Improvements, and any improvements, fixtures and equipment and other property of such Owner, real or personal, located on the Parcel, and including, without limitation, fees or assessments for any governmental services to the Parcel, service payments in lieu of taxes, or any tax which shall be levied in addition to or in lieu of real estate, possessory interest or personal property taxes, which are based upon, allocable to, or measured by or on the sales tax or excise tax levied by the State of Utah, any Governmental Authority with respect to receipt of rent, or are based upon or measured by such Owner’s payroll or the value of Owner’s equipment, furniture, fixtures, or other personal property of Owner located on the Parcel.

1.33 “**Site Plan**” means the site plan of the Project attached hereto as **Exhibit “A”**. Subject to Section 10.4 herein, Declarant may amend this Declaration to update the Site Plan subject to the terms and conditions of this Declaration, so long as such amendment is in accordance with the Applicable Laws.

ARTICLE II EASEMENTS

2.1 Establishment of Project Easements. Declarant does hereby declare, establish, grant, reserve and convey for the use and benefit of each of the Parcels and the Owners and Occupants thereof, the following easements:

(a) Easements of Ingress and Egress. An easement for pedestrian and vehicular (including, but not limited to, passenger, service and delivery vehicles) ingress and egress across and through those areas of the Project designated from time to time as Parking Areas and Driveways, as they may exist now or as they may be constructed from time to time, in favor of each of the other Parcels, for the purpose of providing vehicular and pedestrian ingress and egress, subject to the terms and conditions contained herein.

(b) Parking Easements. An easement to use those Common Areas located within the Parcels that are designated from time to time as Parking Areas for the purpose of providing parking, subject to the terms and conditions contained herein.

(c) Utilities Easements. An easement in, to, over, under, along and across those portions of the Common Areas located within the Parcels necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of lines or systems for utilities serving any Parcel, including, but not limited to, transformers, air conditioning condensers, water, sanitary sewers, storm drains, storm retention filtration, cable TV, water hydrants (fire and domestic) or other fire service lines or fire protection installations, gas, electrical, street lights, telephone and communication lines at any time located on or under the Common Areas.

(i) Any construction or reconstruction of such utility lines shall be done in accordance with all Applicable Laws and be subject to all of the terms and conditions of Article VI below and any development agreements entered into by any such Owners and Declarant.

(ii) Except with respect to ground mounted electrical transformers, emergency generators and light standards, or as may be necessary during periods of construction, repair, or temporary service, all utilities shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berming, and/or landscaping to the satisfaction of the City’s designated supervising authority and all utility lines including existing overhead utility lines within the Property and the Project side of the street shall be placed underground unless required to be above ground by the utility company providing such service or as otherwise approved by the Declarant.

(iii) Any Owner, or Occupant authorized by Owner, to install utility lines pursuant to this Section 2.1 shall (A) provide the Manager and the other Owners not less than thirty (30) days prior written notice of any such installation (B) plan and perform such installation and subsequent use of such utilities outside of normal business hours and in any event in a manner so as to minimize interference with existing utilities previously installed within the Project, (C) pay all costs and expenses with respect thereto, (D) cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be diligently completed following commencement of such work, and (E) use commercially reasonable efforts to cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be done in a manner that minimizes material and adverse impact upon the business operations of any Occupants of the Project. Upon completion of the installation or reinstallation of any such line, the Owner installing the same shall cause an accurate legal description of the location of such line to be prepared and record a memorandum, incorporating by reference this Declaration and setting forth such legal description. If an Owner's utilities have been installed by means of an easement over another Parcel, such Owner shall be responsible, at its sole expense, for restoring or repairing such other Parcel to substantially the condition in which it was in prior to such installation, reinstallation, maintenance, repair, relocation or removal.

(d) Temporary Construction Easements. A temporary easement for incidental encroachments upon areas of the Project immediately adjacent to an Owner's Parcel for the purposes of construction upon such Owner's Parcel provided such easements are exercised reasonably in connection with construction work expeditiously pursued upon such Owner's Parcel and so long as customary insurance is maintained protecting the Owner of such adjacent land from all risks involved with such construction. Any and all such construction shall be done outside of normal business hours to the extent practicable and in any event so as to reasonably avoid any material interference with the business operations conducted from any Building already constructed within the Project. During any such construction, the construction site and surrounding areas shall be kept clean and free of construction material, trash and debris and appropriate precautions shall be taken to protect against personal injury and property damage to other Owners, Occupants and Permittees.

(i) Any and all such construction shall be done in accordance with all Applicable Laws and be subject to all of the terms and conditions of Article VI below and any development agreements entered into by any such Owners and Declarant.

(ii) Without limiting the foregoing provisions of this Section 2.1(d), during any period of construction, the Owner or party then occupying the Building pad area upon which construction is taking place shall fence the same off or such portion thereof as is reasonable given the scope of such construction. Any such fence or other encroachment shall comply with all Applicable Laws and is subject to review and approval by Declarant (which approval shall not be unreasonably withheld, conditioned or delayed) and shall be maintained until construction of the Improvements are completed. No signs or advertising shall be placed upon any such fence without the prior written approval of Declarant.

(iii) All costs associated with the requirements in this Section 2.1(d) shall be borne by the Owner or party performing or causing the performance of such construction

and shall not be included in Common Area Maintenance Costs. Upon completion of any such construction, maintenance or repair, such Owner shall be responsible, at its sole expense, for restoring or repairing such Parcel(s) to substantially the condition in which it was in prior to such construction, maintenance or repair.

(e) Drainage Easements. An easement for the direction, discharge and drainage of surface water and storm water into and through the storm drainage system maintained from time to time on the Project. The drainage easement created by this Declaration is limited to the natural, normal and customary runoff of surface and storm waters, and in no event shall any Owner, Occupant or Permittee cause the discharge of surface or storm waters from its Parcel over, across or into any sidewalks or other portion of any other Parcel in any manner which materially interferes with the use and enjoyment of such other Parcel by the Owners, Occupants or Permittees of such other Parcel. In the event of any such discharge which causes such material interference, the Owner causing such discharge shall be responsible for restoring or repairing such other Parcel to substantially the same condition in which it was in prior to such impermissible discharge. Declarant (or the Manager if Declarant is no longer an Owner) shall have the right to construct, on behalf of and at the expense of all Owners, an on-site collection, cleaning and/or drainage system within the Common Areas; provided further, any costs incurred by Declarant in reviewing any Owner's request for modification to the initial storm drainage system shall be paid for by the Owner requesting such change, plus a fifteen percent (15%) administrative fee of such costs.

(f) Encroachment Easements. An easement in, on, over and under the Project for encroachments as may from time to time be required for Building overhangs, building support columns, canopies, eaves, foundations, slabs, footings, pillars, doors which open outward into the Common Area or onto an adjacent Owner's Parcel and other minor encroachments. Notwithstanding the foregoing, this subparagraph shall not create easements for intentional encroachments without the written consent of Declarant and the Owner of the Parcel affected by the intentional encroachment.

2.2 General Easement Provisions. All rights, privileges and easements granted or reserved by this Declaration apply to all Parcels, and the Owners and Occupants thereof, and are perpetual, reciprocal and non-exclusive, unless otherwise specified. None of the Owners shall assign, transfer, convey or sell any of its rights as set forth in this Declaration except to a purchaser, lessee, sublessee, vendee, trust, deed of trust holder or mortgagee of a Parcel; provided, however, an Owner may grant the right to use the easements granted to such Owner in this Declaration on a non-exclusive basis to such Owner's Occupants and/or Permittees to be used in common with other Occupants and/or Permittees at the Project. No Owner shall grant an easement or easements of the type set forth in this Article II for the benefit of any property not within the Project, without the prior written consent of all of the Owners of the affected Parcels; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to a Governmental Authority or to public utility company. The Owner of any benefited Parcel agrees that it will not use the easements for purposes other than as permitted herein and will at all times comply with all safety rules and regulations promulgated by Governmental Authorities having jurisdiction or authority over the easements. Any request for consent to grant an easement must contain complete information to allow such review. Declarant or the Manager, or any party required to provide consent, may have a third party

review the plans and other documentation related to such request and may charge the requesting Owner a fee for the reasonable cost of such review (\$500.00 or 15% of the review cost, whichever is greater) as well as the reasonable cost of the review fee charged by such third party.

2.3 Subdivision of Parcels. In the event any benefited Parcel hereunder shall, in the future, be subdivided into more than one parcel, or should the lot lines of any Parcel be adjusted, such subdivision or addition or lot line adjustment shall not terminate or otherwise affect any easement established hereunder nor shall any such subdivision or land acquisition be deemed to increase the burden upon the burdened Parcel, as limited by Applicable Laws, or any similar or successor provision of law applicable to the apportionment of easements. In the event of a future subdivision of any Parcel, each of the resulting parcels shall be deemed to be a "Parcel" for purposes of this Declaration. In addition, recordation of a deed with respect to any subdivided Parcel shall constitute (a) a grant of a non-exclusive easement for the benefit of such subdivided Parcel over the portions of the easement areas established by this Declaration located on the remaining Parcels for the uses and purposes and upon and subject to the provisions of this Declaration, and (b) a reservation of a non-exclusive easement for the benefit of the remaining Parcels over the portions of the easement areas established by this Declaration located on such subdivided Parcel for the uses and purposes, and upon and subject to the terms and conditions set forth in this Declaration.

2.4 Subordination. The easements established hereunder shall be superior to any and all deeds of trust, liens, ground leases, licenses, covenants, financing instruments or other encumbrances hereafter affecting any of the Parcels, as well as any of the same specifically subordinated hereto (hereinafter individually a, "**Mortgage**", and collectively, the "**Mortgages**"). Any such Mortgages shall be deemed to be subordinate to this Declaration and any amendments hereto executed by Declarant pursuant to Section 10.4, and this Declaration (as the same may be amended) shall survive any foreclosure of any such Mortgages; provided, however, that nothing in this Declaration will affect the validity of any such Mortgages.

2.5 No Dedication; No Easement by Implication; Prevention of Prescriptive Rights. The easements established in this Declaration are not intended to create, nor will they create, any prescriptive rights in the public. Neither the execution of this Declaration or any instrument which may be executed in connection herewith nor the granting of the easements described herein shall be deemed to grant any other easement to any third party or to establish any easement by implication. Each Owner hereby reserves the right to eject or cause the ejection from its Parcel any person not authorized, empowered or privileged to use that Parcel. Further, each Owner reserves the right to restrict access to its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by any person; provided, however, that prior to such restriction of access the Owner exercising that right shall give written notice to the other Owners, if applicable, of its intention to do so and shall coordinate such restriction of access with the other Owners so that no unreasonable interference with the operation of any other Owner's Parcel shall occur. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any Parcel to the general public or for the general public or for any public purpose whatsoever.

ARTICLE III PARKING

3.1 Parking Areas and Driveways. “**Parking Areas**” shall mean those parking spaces exclusively assigned to each Building and designated as common parking for the Project by Declarant (or the Manager if Declarant is no longer an Owner or Declarant has designated a Manager) in accordance with the Applicable Laws. “**Driveways**” shall mean, but not be limited to, all curb cuts, entrances, exits, driveways, sidewalks, service drives, and access drives to public roads, which are devoted to non-exclusive use in common by the Permittees utilizing the businesses located and to be located on the Parcels. Such Parking Areas and Driveways shall be subject to compliance with the limitations set forth in this Declaration, which may from time to time be curbed, landscaped, expanded, reduced, rearranged, or modified in accordance with Applicable Laws; provided, however, that no such curbing, landscaping, expansion, rearrangement, or modification shall prohibit or materially adversely alter access to each Parcel, or said public streets abutting any Parcel. In no event shall any parking be permitted in the fire lanes of the Project. In the event a party does park in the fire lane at the Project, Manager (or Declarant if Declarant has not yet designated the Manager) shall have the right, at the applicable Owner’s sole cost and expense, to (i) enforce this rule by towing any vehicles, (ii) assign/restrict Permittees’ parking, and (iii) set fines and enforce such fines after notice of non-payment of such fines.

3.2 Parking Charges. No charge of any kind shall ever be made for ingress to, egress from, or parking in the Project, unless ordered by a Governmental Authority.

3.3 Common Parking. Declarant shall have the reasonable discretion from time to time to exclusively assign parking designated as common Parking Areas to specific Buildings upon written request from the Owner of the Building, which written request shall include the basis for the request. Each Owner shall use commercially reasonable efforts to cause the employees of the Occupants of its Parcel to park in the Parking Areas exclusively assigned by Declarant to the Building where the employees work and not in the common Parking Areas. In the event the Occupant(s) or their employees fail to park their vehicles in the Parking Areas exclusively assigned by Declarant to the Building where the employees work, and such violation occurs two (2) or more times with respect to any particular vehicle, then for each additional time that such vehicle is parked in violation of the foregoing provisions of this Section 3.3, Declarant may charge such Occupant and the Owner of the applicable Parcel Fifty and 00/100 Dollars (\$50.00) per day for each such additional occurrence and/or tow such vehicle away from the Project and charge Occupant and the Owner of the applicable Parcel or the owner of such vehicle therefor. All amounts due hereunder shall be payable within thirty (30) days after demand by Landlord.

3.4 Time-Sensitive Parking Areas and Driveways. Declarant, to the extent necessary, shall have the right, from time to time, in consultation with the affected Owner, to reasonably designate certain Parking Areas between and around Buildings A, B, and C as time-limited or restricted to short term pickup and delivery uses for the purpose of maintaining the accessibility of the Driveways. The exercise of such right by Declarant shall be in accordance with Applicable Laws. Declarant shall have the right to impose a reasonable fine on any Owner whose Permittees

fail to comply with the restrictions imposed upon such Parking Areas so designated by Declarant, which shall be paid by the affected Owner within thirty (30) days of written demand.

3.5 Changes to Parking. In connection with the approval of any site plan for construction of any Buildings on any Parcel or any other required permit or approval by any Governmental Authority, each Owner shall not reduce the aggregate Parking Areas within its Parcel below the number required to meet the Minimum Parking Requirements for such Parcel. No Building, sign, fence, wall, structure of any kind, pole, pipe, post or other facility (except exterior boundary walls or fences, decorative landscape plantings, walkways, arcades, curbs, roadways, fire hydrants or lighting facilities) shall be installed or erected within the Parking Areas in such manner so as to interfere with the use of the Parking Areas; provided, however, that the foregoing restriction shall not apply to directional or parking signage, or fenced and screened yards approved by Declarant.

ARTICLE IV RESTRICTIONS

4.1 Establishment of Restrictions. In connection with the easements established in Article II above, to provide for the effective use of such easements for the purposes intended and for the operation of the Project, Declarant does hereby declare, establish and place certain covenants, conditions and restrictions on all of the Parcels as set forth below in this Article IV.

4.2 Compliance with Laws. Each Owner and Occupant shall comply with all Applicable Laws in connection with its use and ownership of the Project; in that regard, without limitation, each shall:

- (a) be authorized to do business in the State of Utah and maintain such licenses as are necessary to lawfully operate;
- (b) Obtain any and all entitlements required by Applicable Laws for the use of its Parcel (including, without limitation, those required in connection with the construction of any Improvements permitted to be constructed under the terms of this Declaration on its Parcel) and the operation of its business thereon;
- (c) observe all reasonable requirements promulgated by Declarant at any time and from time to time relating to delivery vehicles, the delivery of materials, the storage and removal of trash and garbage (with only toters approved by Declarant to be used for hauling trash and garbage from any Occupant building space to a common trash enclosure), and use of the Parking Areas of the Project;
- (d) not use, or permit to be used, any Building in a manner that would constitute a nuisance;
- (e) not commit waste on or in the Project; and
- (f) not permit any noises or sounds (due to intermittence, beat, frequency, shrillness or loudness) above the legal decibel level permitted by Applicable Law, nor permit obnoxious odors to emanate from its premises.

4.3 Declarant Approval. Declarant (or the Manager in the event the original Declarant is no longer an Owner) shall have the right to approve the proposed location, size and design (which shall include, without limitation, exterior design, color scheme, finish, proportions, style or architecture, height, appearance or materials of any proposed Improvements) of any and all Improvements to be constructed on any Parcel, including without limitation, Buildings, landscaping, Driveways and Parking Areas, all in accordance with Article VI below.

4.4 Building Restrictions.

(a) All Buildings and other Improvements may be located only within the Permitted Building Area, and no Building constructed or reconstructed on a Parcel shall exceed the Maximum Building Area for such Parcel, unless approved by Declarant in writing. The Improvements on any Parcel shall comply with all Applicable Laws, including, without limitation, setback requirements, coverage ratios and height restrictions.

(b) In no event shall any Building be constructed, reconstructed, expanded or otherwise modified unless the Minimum Parking Requirements are satisfied solely within the Parcel which includes such Building and without reliance on the Parking Areas located on any other Parcel, unless otherwise approved by Declarant in writing.

(c) Without limiting the foregoing, Declarant shall have the right at any time to unilaterally amend this Declaration to establish height and Floor Area limitations on any Parcel which Declarant owns. Declarant shall promptly notify all other Owners of any such modification.

4.5 Uses in General. Except as otherwise provided in this Declaration or as otherwise approved by the Declarant, the Project shall be used solely for industrial purposes, including light manufacturing or production, warehouse logistics and office use ancillary to such industrial purpose. All deviations from such uses shall be subject to and require the prior written approval of Declarant. No business operation shall be performed or carried out in such a manner that such operation or use, in the reasonable judgment of the Declarant, is or shall become an annoyance or nuisance to other portions of the Project or other Owners or Occupants, which shall in any way interfere with the quiet enjoyment by each of the Owners or Occupants of a Parcel, or which shall, in the Declarant's good faith business judgment, unduly burden parking within the Project. Notwithstanding the foregoing, typical noise associated with speakers or external intercom system shall be deemed not to violate the foregoing.

4.6 Use Restrictions.

(a) No use shall be permitted which is inconsistent with the operation of an industrial complex unless approved in writing by Declarant. Subject to Section 10.4 herein, Declarant shall have the right to further restrict the use of the Real Property unilaterally, so long as any further restriction does not cause any existing Owner or Occupant to be in breach thereof with respect to its then use of its premises at the time this Declaration is so amended.

(b) No display or sale of goods or services, or any storage of goods, portable signs or other objects shall be permitted outside the defined exterior walls, roof or permanent doorways of any Building on a Parcel except Building appurtenances, Improvements, and fenced and screened yards, as approved by Declarant and otherwise in conformance with all Applicable Laws.

(c) No merchandise, goods or substance shall be permitted to be sold, placed, stored within, or otherwise located upon or about the Project, nor shall any act be permitted on or about the Project, that will (i) cause or threaten the cancellation of any insurance covering any Building located upon any Parcels, or covering the Common Areas, or (ii) increase the insurance rates applicable to any Building located upon the other Parcels, or applicable to the Common Areas to rates which exceed the rates which would otherwise apply, unless written consent is granted by Declarant and the Owner agrees to pay such increased cost pursuant to terms and provisions acceptable to Declarant in Declarant's reasonable discretion.

(d) There shall be no promotional, entertainment or amusement activities in the Common Areas which would interfere with the use of the Common Areas and related facilities without the prior written consent of Declarant and Owners of Parcels upon which any such activities are to be conducted.

(e) All Owners and Occupants shall use their best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Parcels they own or occupy in compliance with Applicable Law. Declarant reserves the right to further reasonably regulate the activities of all Owners and Occupants in regard to deliveries and servicing of their respective Parcels for the purpose of maintaining Building accessibility and Parking Areas, Driveways and/or fire lanes free from obstruction, and all such Owners and Occupants shall abide by such further reasonable rules and regulations of Declarant. Declarant shall have the right to impose a reasonable fine on any Owner whose Permittees fail to comply with the restrictions imposed upon such Owner's Parcel.

(f) To the extent such restriction is in compliance with all Applicable Laws, an Owner or Occupant shall not conduct, nor allow to be conducted on such Owner's or Occupant's behalf or with such Owner's or Occupant's permission, any political demonstrations, rallies or similar events within the Project.

4.7 Hazardous Materials. No Owner or Permittee shall generate, use or transport or permit the generation, use or transport of Hazardous Materials in, on, under or about its Parcel, or the Real Property, except for those Hazardous Materials used in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Owner and Occupant shall promptly advise Declarant (or Manager in the event a Manager is designated by Declarant) in writing of: (a) any notices of violation or potential or alleged violation of any laws, ordinances or regulations which are received by said Owner, Occupant and/or Permittee from any Governmental Authority concerning the generation, use, storage, release and/or disposal of Hazardous Materials in, on, under or about such Owner's Parcel; (b) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to such Owner, its Parcel(s) and/or the Occupants thereof; (c) all Claims made or threatened in writing

by any third party against such Owner, its Parcel(s) and/or the Occupant(s) thereof relating to any Hazardous Materials; and (d) any release of Hazardous Materials in, on, under or about the Real Property which such Owner or Occupant knows of or reasonably believes may have occurred. Neither the Manager nor Declarant shall be liable in damages or otherwise solely by reason of its receipt pursuant to this Section 4.7 of information of any kind submitted to the Manager or Declarant relating to Hazardous Materials, and no duty of any kind shall be inferred or imputed to the Manager and/or Declarant as a result of its receipt of such information. In no event shall the Manager or Declarant be obligated to make or perform any inquiry, investigation, enforcement, cleanup, removal or take any other action with respect to the presence of Hazardous Materials on any portion of the Real Property, nor shall the Manger or Declarant be obligated or permitted to take any action with respect to the presence of Hazardous Materials in, on, under or about any portion of the Real Property, except to the extent that Declarant is an Owner of the Real Property affected by the presence of Hazardous Materials thereon. Each Owner shall Indemnify the other Owners from and against all Claims, including, but not limited to, costs of investigation, remediation or removal arising out of any Hazardous Materials used or permitted to be used by such Owner or its Permittees, whether or not in the ordinary course of business.

4.8 Exclusives. Subject to Section 10.4, and only as to Declarant owned Parcels, Declarant hereby reserves the right to grant, in its sole discretion, exclusive operating rights to Occupants leasing within the Real Property from time to time. Notwithstanding anything to the contrary contained in this Section 4.8, (i) no future exclusive operating rights shall prohibit the operation or use of any other leasing Occupant, which is in effect prior to the grant of such exclusive operating right by Declarant, and (ii) in no event may Declarant grant an exclusive operating right to a leasing Occupant, if such exclusive operating right will violate an exclusive operating right granted to a leasing Occupant in another lease, which is then in effect. In the event Declarant sells a Parcel, the Owner purchasing such Parcel shall be subject to any exclusive operating right granted by Declarant to a leasing Occupant on another Parcel until the termination of the applicable lease; provided, however, that the Owner purchasing said Parcel shall not be subject any future exclusive operating right granted by Declarant to a leasing Occupant on another Declarant owned Parcel.

ARTICLE V OPERATION OF PROJECT

5.1 Common Areas. Subject to existing easements of record, the Common Areas shall be used for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, and for the comfort and convenience of Permittees of the Buildings constructed within the Project in accordance with this Declaration. Declarant shall at all times have the right to modify, reconstruct, or alter the layout of the Improvements to the Common Areas, provided that no such modifications shall (a) prevent reasonable pedestrian and vehicular ingress and egress between Parcels, or (b) prevent the visibility of a Parcel unless reasonably approved by the Owner of the affected Parcel, or (c) affect the Parking Areas as prohibited in Section 3.5. Notwithstanding the foregoing, Declarant will be permitted to make such modifications to the Common Areas without the approval of the Owners if such modification is required by a Governmental Authority. In no event shall an Owner make any changes, modifications, or alterations to any of the Parking Areas or

Driveways, or other Improvements located within the Common Areas on its Parcel(s) at any time without the express prior written consent of Declarant in accordance with the provisions of Article VI below.

5.2 Common Area Maintenance; Manager. Declarant shall have the sole right to designate, remove, or replace the Manager, so long as Declarant is an Owner of any portion of the Real Property. Notwithstanding anything to the contrary in this Declaration, the Owners holding a majority of the Proportionate Share shall have the sole right to designate, remove, or replace the Manager when original Declarant is no longer an owner of any portion of the Real Property. During any time period where Declarant has not yet designated the Manager, Declarant shall perform the Manager's obligations as set forth in, subject to the terms of, and pursuant to such rights afforded under, this Declaration, unless Declarant has elected to delegate the Common Area maintenance obligations to the Owners of the Parcels upon which the Common Areas are located. In the event Declarant has elected to make such delegation, the Owners shall maintain the Common Areas located on their Parcels as provided for in this Declaration. Following the designation of the Manager, such Manager shall have all of the rights of Declarant set forth in, and subject to the terms of, this Declaration, and further subject to any limitation on such rights and obligations set forth in any agreement between Declarant and the Manager or the Owners holding a majority of the Proportionate Share and the Manager in the event the original Declarant is no longer an Owner. In order for the Parcels of the Project to be maintained and utilized as an industrial complex to efficiently and effectively operate the Project, all maintenance of the Common Areas shall be performed by the Manager, except as otherwise expressly provided for in this Declaration, in accordance with the Approved Plans.

(a) The "**Common Area Maintenance**" shall include, but not be limited to, the following:

(i) removal of all papers, debris, dirt and refuse from the Common Areas as often as necessary;

(ii) maintenance of Parking Areas properly designated and painted with directional signs and striping;

(iii) maintenance of all paving and surface areas in level and smooth condition, evenly covered with a surfacing material of equal or superior quality to the kind originally installed thereon;

(iv) sweeping of the Common Areas by mechanical sweeper as often as necessary and steam/pressure cleaning of the sidewalks as needed;

(v) maintenance of all lights and light standards in the Common Areas and Common Area directional signs;

(vi) lighting of the Common Areas, which shall include the main lighting of the Common Areas each day from dusk until dawn. Notwithstanding anything to the contrary contained herein, in the event any Owner is responsible for operating and maintaining the lighting of the Common Area located in its Parcel, each such Owner shall comply with and

maintain at all times, the requirements for lighting the Common Areas located on its Parcel in accordance with the provisions contained in this Section 5.2(a)(vi);

(vii) maintenance of all above and below grade stormwater detention or retention facilities located within the Project;

(viii) maintenance, care and replacement of all irrigation systems and of shrubbery and other landscaping upon the Project and adjoining parkways (to the extent such areas have not been annexed into a lighting and landscaping district formed to maintain the same) so that such landscaping is in a healthy thriving condition, which landscaping shall include regular pruning, fertilizing, mowing, and trimming, and the excising of weeds, debris and replacing of dead, diseased or decaying plant material within thirty (30) days of the discovery thereof from, landscaping areas;

(ix) such supervision and security in the Common Areas as determined by Declarant or Manager, in its sole and absolute discretion, provided, however, Declarant and Manager have no obligation to provide supervision and/or security;

(x) repairing or replacing promptly any damage or deterioration to the Common Areas;

(xi) maintenance and annual inspection of all fire lanes at the Project as required by the City or Building and Safety Department, if applicable;

(xii) maintenance of public art at the Project as required by the City or Applicable Law;

(xiii) installation, and regular maintenance, repair, and replacement of storm water catch insert filters in catch basin inlets to capture trash and other floating debris and an underground infiltration chamber;

(xiv) regular maintenance and repair of the Common Areas, and regular maintenance, repair, and replacement of structural storm water treatment devices that are located within the Common Areas; and

(xv) maintenance and repair of all utilities and utility lines under, on, and over any of the Common Areas on any Parcel.

(b) Declarant (of the Manager in the event Declarant has designated a the Manager) shall have the right to take such steps as it deems reasonably necessary, pursuant to Applicable Laws, to prevent those persons not authorized by this Declaration to use the Common Areas from using the Common Areas for ingress, egress and parking, provided the foregoing does not materially interfere with the operation of the Owners' or its Occupants' business in the Project. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Project, except along the common boundary line of any Parcel with any other Parcel.

(c) All Common Area Maintenance shall be performed in compliance with the Approved Plans, and in a good and workmanlike manner and consistent with the standards of comparable industrial complexes in the vicinity of the Project, and shall be performed in a manner so as to minimize to the extent practicable any interference with the operation of the Owners' or its Occupants' business in the Project and to the extent reasonably practicable shall be conducted during non-peak business hours.

(d) Declarant (or the Manager in the event the original Declarant is no longer an Owner) shall carry or cause to be carried, commercial general liability insurance on all of the Common Areas within the entire Project, to be maintained in the amount of at least \$2,000,000 per occurrence and \$5,000,000 general aggregate. All of the Owners shall be named as additional named insureds. The limits of insurance set forth in this Section 5.2(d) may be increased in the reasonable discretion of Declarant (or Manager in the event that a Manager has been designated by Declarant) from time to time, but not more frequently than once every three (3) years, to meet changed circumstances, including, without limitation changes consistent with the standards required by owners or landlords of other similar Projects located in the vicinity of the Project.

(e) Each Owner shall pay its Proportionate Share of the Common Area Maintenance Costs in accordance with the provisions of Section 5.4 below.

5.3 License for Manager. In the event a Manager is designated, Declarant does hereby reserve, declare, establish, grant and convey for itself and for the benefit of the Manager and their respective agents, employees and contractors, a permanent, non-exclusive license to enter upon the Parcels (but not any Building erected thereon) for purposes of discharging the Common Area Maintenance obligations set forth in this Article V.

5.4 Maintenance Cost-Sharing Covenants.

(a) Each of the Owners shall pay its Proportionate Share of Common Area Maintenance Costs. As used herein, "**Common Area Maintenance Costs**" shall mean all costs actually incurred by the Manager pursuant to the discharge of the Common Area Maintenance obligations as set forth in this Article V, including without limitation costs incurred for (i) painting, resurfacing, restriping, cleaning, sweeping and lighting Parking Areas and Driveways; (ii) cultivating, irrigating and fertilizing landscaped areas and the maintenance and repair of sprinkler systems; (iii) maintenance, repair and replacement of Common Areas including, but not limited to perimeter walls, signs advertising and identifying only the Project, Parking Area directional and safety signs, tenant directory signs, lights, lighting standards, parking bumpers, drainage facilities and all utility systems serving the Common Area; (iv) premiums for the liability insurance required to be carried by Declarant hereunder; (v) security services at the Project to the extent deemed necessary by the Manager; (vi) expenses that would, in accordance with sound Project common area management and generally accepted accounting principles consistently applied, be capitalized or which Declarant otherwise elects to capitalize ("**Capital Expenditures**") but only to the extent that they are (A) amortized over their useful life as reasonably determined by Declarant based upon generally accepted accounting practices, consistently applied, and only include the annual amortization of Capital Expenditures included in Common Area Maintenance Costs for the year in question, and (B) for the repair or

replacement of the initial Common Area improvements with substantially similar improvements (as opposed to for or relating to new construction, upgrades and/or additions to the Common Area); (vii) payments relating to any ground lease that the Manager has elected to enter into in its sole and absolute discretion for the benefit of the Real Property (the “**Designated Ground Lease**”), provided that the Proportionate Share of such payments shall be borne solely by the Owners that have elected to utilize and benefit from such Designated Ground Lease; and (viii) a commercially reasonable administrative fee. For any cost not expressly excluded by subpart (b) below, “**Common Area Maintenance Costs**” shall also include all costs actually incurred by the Declarant pursuant to the discharge of the Common Area Maintenance obligations by Declarant.

(b) Notwithstanding the foregoing, Common Area Maintenance Costs shall not include amounts expended for: (i) initial construction of the Common Areas; (ii) any cost of maintaining or operating any area on a Parcel for trash storage or truck parking or unloading which exclusively serves a Building; (iii) any Real Estate Taxes (except as otherwise provided in Section 8.1(a) below), it being understood that the Owner of each Parcel shall be obligated to pay the Real Estate Taxes assessed against its own Parcel (provided, however, that if any Real Estate Taxes are not separately assessed, then the Owners shall be obligated to pay their respective Proportionate Tax Share of such amounts as described in Section 8.1 below); (iv) except strictly as permitted in Section 5.4(a) above, charges for depreciation, interest or amortization concerning the Project; (v) except strictly as permitted in Section 5.4(a) above, Capital Expenditures and the maintenance, painting, and rehabilitation of Buildings; (vi) expenses resulting from the gross negligence or willful misconduct of Declarant, and each and any of its employees, agents or contractors, or other tenants of the Project; (vii) expenses associated with the operation of the business of Declarant, including, without limitation, personnel costs of employees, legal and accounting fees involving relations or disputes with employees, Owners, Occupants or others, tax return preparation and administration, leasing commissions, advertising expenses, costs incurred or associated with leasing and releasing, bad debts and other business losses; (viii) amounts for which recovery is provided for or obtained pursuant to warranties or insurance policies; (ix) **intentionally omitted**; (x) the cost of providing improvements within the premises of any tenant of the Project (including, without limitation, associated permitting, licensing and inspection costs and all taxes relating to such tenant improvements); (xi) overhead and profit increment paid to Declarant or to affiliates of Declarant for services to the extent the same exceeds the costs of such services rendered by other first-class unaffiliated third parties on a competitive basis; (xii) ground lease or master lease rental, except any Designated Ground Lease payment; (xiii) expenses in connection with services or benefits which are not offered to all Owners; (xiv) advertising and promotional expenditures, whether in connection with leasing the Project, holiday promotions or otherwise, and costs of the installation of signs identifying the Owner or Manager of the Project; (xv) electric power costs for which any Occupant directly contracts with the local public service company; (xvi) any costs relating to Hazardous Materials, asbestos and the like not resulting from the actions of an Occupant (other than the cleanup of routine oil spills); (xvii) charitable or political contributions; (xviii) financing and refinancing costs and principal and interest payments on mortgages and deeds of trust; (xix) the cost of providing any service directly to an Owner or any other charges or costs billed to an Owner directly; and (xx) rentals and other related expenses for leasing heating, ventilation and air conditioning systems, elevators, or other items (except for rentals and other related expenses for leasing equipment when needed in connection with normal repairs and maintenance of the

Common Area and/or to ameliorate an emergency condition in the Project) which if purchased, rather than rented, would constitute a Capital Expenditure.

(c) In connection with the calculation of Owner's Proportional Share of Common Area Maintenance Costs, where certain costs are not attributable to all Owners, and/or an Owner or Occupant is maintaining a certain service with Declarant's permission at that Owner's or Occupant's own expense that would otherwise be maintained and expensed by Declarant, then in that event Declarant may, at Declarant's reasonable discretion, establish alternative Common Area Maintenance Cost pools and determine different pro-rata shares for certain Common Area Maintenance Costs, which may be in addition to, or substituted for, the calculation of Owner's or Occupant's Proportional Share. In addition, Declarant may at its election make reasonable and equitable changes to the allocation of any Common Area Maintenance Costs incurred pursuant to this Declaration between all Owners or Occupants of the Parcels to reflect the different uses of the Parcels (including type and intensity of use), occupancy loads, vehicle trips, and other factors that Declarant reasonably determines impacts the useful life of any Common Area improvements or maintenance costs thereof, so long as such changes do not result in a double recovery of any costs and expenses to the Manager or Declarant, as applicable.

(d) On an annual basis, Manager shall submit a budget to each Owner for the estimated Common Area Maintenance Costs for that year, together with such back-up material as is reasonably necessary to substantiate the same. On the first day of each calendar month following the date on which this Declaration is recorded in the Official Records, each Owner shall pay to the Manager one-twelfth (1/12th) of the amount which the Manager shall reasonably estimate to be each such Owner's Proportionate Share of the Common Area Maintenance Costs for the next ensuing twelve (12) month period. The Manager shall use the funds so paid to pay the Common Area Maintenance Costs as the same become due and payable.

(e) Manager shall, within ninety (90) days after the end of each calendar year, send to each Owner a written statement (the "**CAM Statement**") of the actual Common Area Maintenance Costs incurred during the preceding year. Concurrently with the delivery of the CAM Statement, the Manager shall refund the amount, if any, by which such Owner's Proportionate Share of the actual Common Area Maintenance Costs is less than the aggregate amount of the payments theretofore made by such Owner for such year. Should an Owner have paid less than its actual Proportionate Share during said period, such Owner shall pay to the Manager the amount of such deficiency within thirty (30) days after receipt of the CAM Statement. Any amounts owing hereunder not paid within thirty (30) days after receipt of the CAM Statement shall be paid with interest at the rate specified in Section 9.2 below.

(f) Upon such Owner's prior written consent, the Manager shall have the right, but not the obligation, to bill the Occupant of any Parcel directly for any Common Area Maintenance Costs which such Occupant is responsible for under its respective lease. In the event that the Manager elects to so bill any such Occupant directly and the Owner consents to such direct billing, the Manager shall send a copy of the subject billing statement to the Owner of the Parcel on which such Occupant's premises are located concurrently with sending any such notice to the Occupant. In addition, the Manager shall have the right to bill an Owner directly

and exclusively for any costs incurred or resulting liabilities as a direct result of an act or omission by such Owner or its Occupants.

5.5 Records. In the event an Owner (or any Occupant who is directly billed pursuant to Section 5.4(d), above and Owner has consented to allow such Occupant to dispute such charges) disputes the amount of the Common Area Maintenance Costs set forth in the CAM Statement delivered by the Manager pursuant to Section 5.4(d) above, such Owner (or Occupant, as the case may be) shall have the right, at Owner's (or Occupant, as the case may be) cost, after reasonable notice to the Manager, to have Owner's (or Occupant's, as the case may be) authorized employees or an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm and is not paid on a contingency fee basis) inspect and photocopy, at the Manager's offices during normal business hours, the Manager's books, records and supporting documents concerning the Common Area Maintenance Costs set forth in such CAM Statement; provided, however, Owner (or Occupant, as the case may be) shall have no right to conduct such inspection, have an audit performed as described hereinbelow, or object to or otherwise dispute the amount of the Common Area Maintenance Costs set forth in any such CAM Statement unless Owner (or Occupant, as the case may be) notifies the Manager of such objection and dispute, completes such inspection, and commences and completes such audit within one (1) year immediately following Owner's (or Occupant, as the case may be) receipt of the particular CAM Statement in question (the "**Review Period**"). Notwithstanding any such timely objection, dispute, inspection, and/or audit, and as a condition precedent to Owner's (or Occupant, as the case may be) exercise of its right of objection, dispute, inspection and/or audit as set forth in this Section 5.5, Owner shall not be permitted to withhold payment of, and Owner (or Occupant, as the case may be) shall timely pay to the Manager, the full amounts as required by the provisions of this Article V in accordance with such CAM Statement; provided, however, that such payment may be made under protest pending the outcome of any audit as described below. An Owner's (or Occupant's, as the case may be) failure to dispute and/or audit the amounts set forth in any CAM Statement within the Review Period shall be deemed to be the Owner's (or Occupant, as the case may be) approval of such CAM Statement and such Owner, thereafter, waives the right or ability to dispute the amounts set forth in such CAM Statement. If the Manager and Owner (or Occupant, as the case may be) determine that Common Area Maintenance Costs set forth on the CAM Statement are less than reported, the Manager shall provide such Owner (or Occupant, as the case may be) with a credit against the next installment of estimated Common Area Maintenance Costs in the amount of the overpayment by Owner (or Occupant, as the case may be). Likewise, if the Manager and Owner determine that Common Area Maintenance Costs set forth on the CAM Statement are greater than reported, Owner (or Occupant, as the case may be) shall pay the Manager the amount of any underpayment within thirty (30) days. Each Owner (or Occupant, as the case may be) agrees to keep, and to cause all of Owner's (or Occupant, as the case may be) employees and consultants to keep, all of the Manager's books and records and the audit, and all information pertaining thereto and the results thereof, strictly confidential, and in connection therewith, Owner (or Occupant, as the case may be) shall cause such employees, consultants to execute such reasonable confidentiality agreements as the Manager may require prior to conducting any such inspections and/or audits. If any such audit reveals that the Manager overstated Common Area Maintenance Costs as set forth in the relevant CAM Statement by

more than five percent (5%), then the Manager agrees to pay the reasonable, third party cost of such audit incurred by Owner (or Occupant, as the case may be).

5.6 Right to Maintain Parcels Separately. In the event that no person is acting in the capacity of the Manager, then the Owners, and not Declarant, shall be required to maintain the Common Areas located on their Parcels in the same manner and to the same standards as set forth in this Declaration, including providing the insurance coverage set forth in Section 5.2(d), until a new Manager is selected. Notwithstanding the existence of a Manager, Declarant has the right to authorize or require an Owner to maintain its own Parcel, in which event such Owner shall maintain its Parcel to the same standards as set forth in this Declaration.

5.7 Security.

(a) Each Owner hereby acknowledges that neither Declarant nor the Manager if so designated shall have any obligation to provide guard service or other security measures for the benefit of any interior portion of any Building at the Project. Each Owner shall provide any security measures for its Parcel required by any Government Authority or as necessarily determined by such Owner.

(b) Each Owner shall indemnify, defend, protect and hold Declarant, and Manager in the event a Manager is designated, and their representative, employees, agents and contractors harmless from any Claims arising out of or relating to such Owner's provision of security services pursuant to this Section 5.7.

**ARTICLE VI
CONSTRUCTION OF IMPROVEMENTS; ALTERATIONS**

6.1 Building and Improvement Restrictions. No Building, or other Improvements that are external to the Building, or that are structural in nature, shall be constructed, erected, placed, or substantially altered or modified from its previous condition without the prior written consent of Declarant, not to be unreasonably withheld, conditioned, or delayed; provided, however, that Declarant shall be permitted to withhold its approval in the event that (a) any aspect or element of such proposed Building or other Improvement is not permitted under the provisions of this Declaration, (b) any such proposed construction, erection, placement, alteration or modification is not compatible, in Declarant's reasonable discretion, with the architectural themes and design of the Buildings and other Improvements located in the Project (except that the reconstruction of a Building consistent with its original architectural theme and design shall be permitted), or (c) any such proposed construction, erection, placement, alteration or modification would, in Declarant's reasonable discretion, impair any parking or access rights granted to any Owner pursuant to this Declaration. The withholding of such approval as provided herein by Declarant shall be applied without discrimination and uniformly among each similarly situated Owner of Parcel.

6.2 General Construction Requirements.

(a) All construction activities performed within the Project shall be performed in compliance with all Applicable Laws. All construction shall use new materials, and shall be performed in a good, safe, workmanlike manner.

(b) No construction activities performed by an Owner shall:

(i) cause any unreasonable increase in the cost of constructing Improvements upon another Owner's Parcel;

(ii) unreasonably interfere with construction work being performed on any other part of the Project;

(iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Project by any other Owner or its Occupants; or

(iv) cause any Improvements located on another Parcel to be in violation of any Applicable Law.

(c) No construction will alter the flow of surface water from one Parcel onto another Parcel; provided, that any alteration in the water flow which may occur as a natural consequence of normal construction activities and the existence of the Owners' Improvements shall be permitted, so long as the Owner provides at its own cost for the proper disposition of water flow to the storm drainage system located outside of the Project.

(d) The architectural theme of any Improvements constructed on any Parcel within the Project shall be compatible with the approved building elevations, as reasonably determined by Declarant (or the Manager in the event the original Declarant is no longer an Owner), pursuant to Section 4.3 above.

(e) Incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, Improvements, signs, utility lines and Common Area located in the Project, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with the use of the improved Common Area or with the normal operation of any business in the Project.

6.3 Submission and Approval of Plans. Prior to any excavation, construction or reconstruction of any Building or other Improvements that are external to the Building or structural in nature, each Owner shall cause its licensed architect and civil engineers to submit to Declarant preliminary plans for such proposed Improvements. Declarant shall approve or disapprove said preliminary plans within thirty (30) days of the receipt thereof, which approval shall not be unreasonably withheld. If Declarant reasonably disapproves of the preliminary plans then the Owner applying for the approval shall cause preliminary plans to be revised in such manner as is required to obtain Declarant's reasonable approval; provided, however, such Owner may alternatively withdraw its request for approval of plans. Final plans, shall be substantially

consistent with the preliminary plans approved by Declarant and shall be delivered to Declarant for Declarant's reasonable approval at least thirty (30) days prior to commencement of construction. Declarant's reasonable final approval of the working plans shall be required prior to commencement of construction. Any approval of Declarant of preliminary or final plans shall be indicated only by a dated signature of Declarant on said plans. No material change shall be made in the final plans approved by Declarant without the written approval of Declarant, which approval shall not be unreasonably withheld, conditioned or delayed. Declarant shall have the right to inspect the progress of such construction to insure compliance with the final plans. Any inspection or approval of plans by Declarant shall be for the purpose of assuring compliance with the requirements of this Declaration and that plans do not interfere with other Improvements or utility lines in any way. Declarant shall have no responsibility for proper engineering, safety, and/or design of facilities or compliance with applicable governing codes and regulations is implied or inferred on the part of Declarant by the plan approval thereof. Declarant/Manager may have a third party review the plans and charge requesting Owner a reasonable review fee (\$500.00 or 15% of the review cost, whichever is greater) as well as the reasonable cost of the review fee charged by such third party.

6.4 Staging Areas. In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Owner reserves the right to create a temporary staging and/or storage area in the Common Area on its Parcel at a location reasonably approved by Declarant and provided that such location as will not (a) unreasonably interfere with access between such Parcel and the other areas of the Project, or (b) obstruct the main access drives and service drives designated on the Site Plan.

6.5 License to Use Common Areas.

(a) Each Owner hereby irrevocably grants to each other Owner, the Declarant, any Manager, and each Owner's respective contractors, materialmen and laborers a temporary license during the term of this Declaration for access and passage over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain Improvements upon the grantee's Parcel; provided, however, such license shall be in effect only during periods when actual construction and/or maintenance is being performed and such license shall not be used in a manner that will unreasonably interfere with the use and operation of the Common Area by others, including performing such construction and/or maintenance during off-peak business hours to the extent practicable. Prior to using the license granted herein, the grantee shall endeavor to notify the grantor of the work to be performed.

(b) Any Owner availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall complete such work as quickly as possible, and shall promptly clean the area and restore and/or repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

(c) If a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Owner shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Owner from using the Common Area on its Parcel.

6.6 Liens.

(a) If any mechanic's lien is filed against the Parcel of one Owner as a result of services performed or materials furnished for the use of another Owner, the Owner permitting or causing such lien to be so filed shall cause such lien to be discharged within twenty (20) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien and shall Indemnify the other Owner and its Parcel against all Claims on account of such lien or claim of lien.

(b) Nothing herein shall prevent an Owner permitting or causing such lien from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence and in good faith. If such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs or other charges necessary to release such lien.

(c) Notwithstanding the foregoing, upon request of the Owner whose Parcel is subject to such lien, the Owner permitting or causing such lien to be filed shall within twenty (20) days after notice thereof cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by Applicable Law to obtain such release and discharge. The Owner permitting or causing such lien agrees to Indemnify the other Owner and its Parcel from and against all Claims arising out of or resulting from such lien.

6.7 Damage or Destruction. Each Owner shall keep in full force and effect (or cause its Occupant to keep in full force and effect) a policy of "special form" property insurance covering loss or damage to any Building on its Parcel, together with such other structures and Improvements constructed thereon which are not Common Areas in the form and coverage amounts specified in Section 8.2 below. If any Building or other Improvements on a Parcel are damaged by fire or other casualty (whether insured or not), then the Owner of the damaged Parcel shall, subject to governmental regulations and/or insurance adjustment delays, within thirty (30) days of the date of such casualty, remove the debris resulting from such event and provide a sight barrier. Within a reasonable time (not to exceed sixty (60) days with respect to commencement, and two hundred ten (210) days with respect to completion, of such repair or restoration) or immediately, if a safety issue, after receipt of (a) insurance proceeds, (b) required governmental permits and approvals, and (c) approvals or consents required under this Declaration and any other instruments affecting the other Parcels, as applicable, all of which shall be promptly applied for and diligently pursued by the Owner of the damaged Parcel, the affected Owner shall (i) repair or restore the Building or other Improvements so damaged to a complete unit, such construction to be performed in accordance with all provisions of this Declaration, or (ii) erect another Building or other Improvements in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the balance of such Building and other Improvements and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be maintained by the Owner of the damaged Parcel, at its sole cost and expense, in good condition and repair in a manner consistent with the maintenance and repair standards of the Common

Area and as required under Article V above, until a replacement Building or other Improvement is erected thereon.

6.8 Damage to Common Area or Other Buildings. If any portion of the Common Area in the Project is damaged as a result of any casualty, and said casualty is covered by the Manager's (or Declarant's if Declarant has not designated a Manager) insurance coverage, as required by Section 5.2(d) above, Declarant shall promptly perform or cause to be performed the reconstruction of the Common Area to a condition substantially equivalent to its condition immediately before the casualty, with the cost of such reconstruction (less any insurance proceeds received by Declarant in connection therewith but including the cost of any deductible paid therefor) being deemed a Common Area Maintenance Cost under this Declaration.

ARTICLE VII SIGNS

7.1 Building Signs. Any exterior sign attached to the exterior of any Building located on a Parcel shall be in conformance with all Applicable Laws, harmonious with the architectural design and materials of the Project, and must be approved by the Manager, which approval shall be granted in the sole and absolute discretion of the Manager.

7.2 Maintenance and Repair of Signs. Other than with respect to Common Area directional signs, each Owner shall, at its sole cost and expense, keep all of the signs and appurtenant facilities located upon its Parcel including any exterior sign attached to the exterior of any Building located on such Parcel, in good and clean order, operation and repair, consistent with a first-class Project, and shall repair to the original specifications any damage to such signs and appurtenant facilities.

ARTICLE VIII OWNER RESPONSIBILITIES

8.1 Real Estate Taxes.

(a) Each Owner shall at all times cause the Real Estate Taxes separately assessed against its Parcel, including, without limitation, the Common Areas located on its Parcel, to be paid before any penalty or late charge is payable with respect thereto. In the event that any Real Estate Taxes are payable by the Owners of a Parcel but are not separately assessed between such Parcels, then Declarant shall pay such Real Estate Taxes, and each Owner shall be obligated to pay to Declarant its Proportionate Tax Share of such Real Estate Taxes, as part of Common Area Maintenance Costs, within thirty (30) days of written request from Declarant, accompanied by the subject tax or assessment bill or billed monthly on estimated Proportional Share from Manager.

(b) Any Owner may contest, object to or oppose (herein "**Contest**") any tax, assessment, imposition or charge of which such Owner is required pursuant to Section 8.1(a) above to pay all or a portion, provided that prompt notice of such Contest shall be given to Declarant, and such contesting Owner shall pay under protest such tax, assessment, imposition or charge which is the subject of a Contest. Each Owner agrees to cooperate with the contesting

Owner at no out-of-pocket expense to the non-contesting Owner in any such Contest. The contesting Owner shall not subject a non-contesting Owner to any penalty, fine, interest criminal proceeding or increase in taxes, or to imminent danger of final sale or seizure of an Owner's interest in the Project, as a result of any such Contest.

8.2 Insurance. Each Owner shall, at its sole cost and expense, obtain (or cause its Occupant(s) to obtain) and at all times maintain (a) a commercial general liability insurance policy with amounts not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the annual aggregate, and (b) "Special Form" coverage property insurance covering all Buildings and all other Improvements, in the amount full replacement cost of such Buildings and Improvements (excluding foundations, footings and excavation costs), with commercially reasonable deductibles. The limits of insurance set forth in this Section 8.2 are the minimum amounts required hereunder, and may be revised by the Manager from time to time, but not more frequently than once every three (3) years, to meet changed circumstances, including, without limitation, changes consistent with the standards reasonably required by owners or landlords of other similar Projects located in the county in which the Project is located. Owners may provide insurance through a blanket policy (so long as such policy includes a per-location endorsement with coverage for the Owner's Parcel in the amount required hereunder).

8.3 Waiver of Claims; Waiver of Subrogation. Each Owner and Occupant hereby waives any and all rights of recovery against each other Owner and Occupant for any loss or damage to the Buildings and Improvements located on its respective Parcels and/or in the Common Areas, or the contents contained therein, or for loss of income on account of risks insured under any policy of insurance carried or required to be carried by an Owner or Occupant under this Declaration, and each Owner's or Occupant's aforesaid policies of insurance shall contain appropriate provisions recognizing this mutual release and waiving all rights of subrogation by the respective insurance carriers.

8.4 Maintenance of Parcels and Improvements. Subject to the provisions of Article V above, each Owner shall keep, maintain, repair, manage and operate its Parcel(s) and each Building and Improvement (including utility lines and Building signs) on its Parcel(s), whether occupied or unoccupied, in good and clean order, and in a state of condition and repair, without public or private nuisance, in conformity with first-class Project standards, and in such manner to establish, maintain and present, at all times, the appearance of a clean, well-managed, attractive, well-coordinated and unified operation; and in compliance with all Applicable Laws, the Approved Plans. The obligations of the Owners described herein shall include, without limitation, the obligation to:

(a) maintain, care for and replace all irrigation systems, shrubbery and other landscaping on the Parcel(s) and contiguous areas not covered by Common Area Maintenance (to the extent such areas have not been annexed into a lighting and landscaping district formed to maintain the same) so that such landscaping is in a healthy thriving condition, and which landscaping shall include regular pruning, fertilizing, mowing, and trimming, and the excising of weeds, debris and replacing of dead, diseased or decaying plant material within thirty (30) days of the discovery thereof from, landscaping areas on the Parcels;

(b) periodically wash the exterior portions of their Building(s) including any windows, tile or standing-seam metal roofs and to maintain, repair, replace and keep free of refuse and rubbish (i) any service, loading, receiving or parcel pick-up or delivery areas situated on such Owner's Parcel(s), (ii) any portion of the Common Area situated within such Owner's Parcel which is devoted from time to time to the exclusive use of such Owner or its Occupants, and (iii) any Parking Areas and Driveways, roads, sidewalks, landscaping or other Improvements which are not part of the Common Area but which are installed for the exclusive use or benefit of such Owner or its Occupants including, without limitation, sidewalks, planters, bike racks, and exclusive Parking Areas and Driveways, if any. Each Owner hereby agrees to re-paint the exterior painted portions of its Building, if any, at least once during each seven (7) consecutive year period, or such longer period of time as the Manager may reasonably permit, to a common standard consistent with the majority of Buildings within the Project and Approved Plans;

(c) manage, maintain and repair, and operate the Parking Areas and Driveways, roads, and sidewalks on the Parcel(s) that are not covered by Common Area Maintenance. In the event any Owner or Occupant of such Owner's Parcel(s) fails to repair or maintain any portion of such Parking Areas and Driveways, roads and sidewalks on its Parcel(s) as required herein, following thirty (30) days' written notice from the Manager to the responsible Owner and Occupant, the Manager shall have the right, but not the obligation, to enter the affected Parcel(s) to repair or maintain, as determined in its sole discretion, such portion of the Parking Areas and Driveways, roads and sidewalks on the affected Parcel(s), for and on behalf of such responsible Owner or Occupant. In such event, the Manager shall be entitled to immediately recover upon written demand from the responsible Owner and Occupant thereof the costs of such repairs or maintenance plus an administrative fee of fifteen percent (15%) of such costs, together with interest on such costs at the lesser of: (x) ten percent (10%) per annum, or (y) the maximum legal rate from the date of the written demand for payment; and

(d) maintenance and repair of all utilities and utility lines under, on, and over any Parcel not contained within the Common Areas thereon.

8.5 Indemnification. Subject to Section 8.3:

(a) Each Owner shall Indemnify the other Owners and their respective Permittees, collectively and individually, from and against any and all Claims for injury to or death of any person or damage to or destruction of any property occurring in the interior of any Building constructed on the indemnifying Owner's Parcel; provided, however, that the foregoing indemnity shall not be applicable to any Claims caused by the gross negligence or willful act or omission of such indemnified Owner or its Permittees or anyone claiming by, through, or under either of them.

(b) Each Owner agrees to Indemnify each other Owner and their respective Permittees, individually and collectively, from and against any and all Claims for damage to person or property or for mechanics' liens arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner; provided, however, that the foregoing indemnity shall not be applicable to any Claims caused by the gross negligence or willful act or omission of such indemnified Owner or its Permittees or anyone claiming by, through or under either of them.

ARTICLE IX REMEDIES

9.1 Default and Remedies. In the event of any violation (a “**Breach**”) by any Owner or Permittee of any of the terms of this Declaration, which Breach has not been cured within ten (10) business days of written notice therefor by an Owner (or if any such Breach is not reasonably susceptible of cure within such ten (10) business day period, then if the breaching Owner has not commenced promptly within such 10-business day period to effect a cure and thereafter diligently proceeds to complete the same), a non-breaching Owner shall have the following rights and remedies:

(a) Substitute Performance. A non-breaching Owner and the Manager, may at its option: (i) pay any unpaid sum or settle or discharge any action therefor or judgment thereon; or (ii) enter an affected area and perform such work as may be reasonably necessary to resolve the same or restore any Improvements thereon to the condition required hereunder; or (iii) provide other substitute performance of any obligations of the breaching Owner at such Owner’s expense. In addition, a non-breaching Owner may enter the Parcel(s) owned by an Owner in Breach to remedy such Breach in the event of an emergency, where compliance with the notice and cure periods set forth above would likely result in damage to the Parcel(s) of the non-breaching Owner or injury to its Occupants, in which event such non-breaching Owner shall promptly thereafter give notice to the Owner in Breach of the nature of such Breach, the exigent circumstances requiring such immediate action and the action(s) so taken. In any such event, the breaching Owner shall reimburse the performing Owner for all reasonable direct costs and expenses connected with such performance within thirty (30) days after receipt of any itemized statement showing all such direct costs and expenses of remedying such default, plus interest on all such amounts owed at the rate set forth in Section 9.2 below from the date due until paid.

(b) Damages. A non-breaching Owner and the Manager may bring a suit for damages for any compensable Breach of any of the easements or covenants contained herein, or for declaratory relief to determine the enforceability of any of the agreements contained herein, including all court costs, reasonable attorneys’ fees and other costs of collection or enforcement related thereto.

(c) Equity. It is recognized that a Breach by an Owner or any Permittee, of one or more of the easements or rights or agreements contained herein, may cause a non-breaching Owner to suffer material injury or damage not compensable in money, and that the non-breaching Owner and the Manager shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these restrictions or for an injunction to prevent or enjoin the continuance of any such Breach hereof.

(d) Abatement. Any such Breach of this Declaration or any provision hereof is hereby declared to be a nuisance, and a non-breaching Owner and the Manager shall, after expiration of any applicable notice and cure periods set forth in this Declaration, be entitled to enter the Parcel or portion thereof as to which a Breach exists and summarily abate and remove, without further legal process, to the maximum extent permitted by Applicable Laws, any structure, thing, or condition that may exist in breach of any of these restrictions, or to prosecute any remedy allowed at law or in equity for the abatement of such nuisance against any person or

entity acting or failing to act in breach of these restrictions, all at the sole cost and expense of the breaching Owner or any Occupant having possession under such Owner.

(e) Lien Rights. Any costs or expenses paid or incurred by a non-breaching Owner or the Manager pursuant to Article IX above or any amount owed to the Manager or to a non-breaching Owner as a result of a Breach by an Owner of a monetary covenant contained herein, in each case together with interest thereon at the rate set forth in Section 9.2 below as well as reasonable attorneys' fees and other costs of collection, shall upon recordation of a certificate or notice of lien or default become a continuing lien and charge against the breaching Owner's Parcel until paid, and shall also be the personal obligation of the Person who was the Owner of such Parcel when such charges became due or when such Breach was committed. In connection therewith, the Manager or the non-breaching Owner, as applicable, may serve upon the breaching Owner, and may record in the Official Records, a certificate or notice of lien which shall contain the following information: (i) the name of the lien claimant; (ii) a statement concerning the basis for the claim of lien and identifying the lien claimant; (iii) an identification of the Owner or reputed Owner of the Parcel or Parcels or interest therein against which the lien is claimed; (iv) a description of the Parcel or Parcels against which the lien is claimed; and (v) a statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date and document number of recordation hereof. The notice of lien shall be duly acknowledged and contain a certification that a copy thereof has been served upon the Owner against whom the lien is claimed, by one of the methods permitted under Section 10.7 below. If such Breach is fully cured within thirty (30) days after such recording or delivery of notice (or within such longer period as may be required by Applicable Law), the Manager or the non-breaching Owner (as applicable) shall record an appropriate release of any recorded lien within ten (10) business days after the Breach is so cured at the sole expense of the breaching Owner. If such Breach is not so cured, then the Manager or the non-breaching Owner (as applicable) may act as its own trustee or may appoint another to serve as trustee to foreclose such lien by a sale conducted pursuant to the Applicable Laws or other statutory provisions applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by Applicable Laws. Declarant or the non-breaching Owner (as applicable), through its authorized representatives, may bid on and acquire any property subject to such lien at any such foreclosure sale. The liens provided for hereby shall be subordinate to and shall not affect the rights of the holders of any obligation secured by a mortgage or deed of trust made in good faith and for value.

9.2 Interest and Late Charges. The late payment of any amount due to an Owner (or the Manager) exercising its rights under this Declaration will cause such Owner (or the Manager) to incur costs not contemplated by this Declaration, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any payment due to an Owner (or the Manager) exercising its rights under this Declaration is not received by the date when due, then without any requirement for notice to such breaching Owner, then such breaching Owner shall pay to the other Owner (or the Manager) exercising its rights under this Declaration a late charge equal to the greater of \$250 or five percent (5%) of such overdue amount. Acceptance of such late charge by an Owner (or the Manager) exercising its rights under this Declaration shall in no event constitute a waiver of the default with respect to such overdue amount or prevent the Owner (or the Manager) exercising its rights under this Declaration from exercising any of the rights and remedies granted hereunder. In addition to the foregoing, the breaching Owner agrees to pay interest at a per annum rate which is the greater of ten percent (10%) or seven percent (7%) in

excess of the Prime Rate (but in no event greater than the maximum interest rate permitted by Utah law) on any and all sums due under this Declaration from the payment due date until the date fully paid.

9.3 Waiver. No waiver by a non-breaching Owner of a Breach of any of these restrictions and no delay or failure to enforce any of these restrictions shall be construed or held to be a waiver of such Breach by any other Owner, or as a waiver of any succeeding or preceding Breach of the same or any other of these restrictions. No waiver of any Breach hereunder shall be implied from any omission to take any action on account of such Breach if such Breach persists or is repeated, and no express waiver shall affect a Breach other than as specified in said waiver.

9.4 Rights of Lenders. No Breach, enforcement or attempted enforcement of any of the terms, covenants, conditions or restrictions of this Declaration will defeat or render invalid the lien of any mortgage or deed of trust securing a loan made in good faith and for value with respect to development financing, permanent financing, or refinancing of a Parcel or any facilities thereon; provided, however, that all provisions of this Declaration will be binding upon and effective against any subsequent Owner of a Parcel or successor whose title to the property or any portion of such is acquired by foreclosure, trust deed sale, or otherwise.

9.5 Limitation of Liability. There shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Manager, Declarant, or an Owner hereunder, including, but not limited to, officers, directors, shareholders, members, partners, employees or agents thereof with respect to any of the terms, covenants, conditions, and provisions of this Declaration. Any non-breaching Owner who seeks recovery from a breaching Owner shall look solely to the interest of such breaching Owner, its successors and assigns, in its Parcel(s), for the satisfaction of each and every remedy of the non-breaching Owner.

ARTICLE X MISCELLANEOUS

10.1 Binding Effect; Covenants Running with the Land. Declarant intends that every Person who now or in the future owns or acquires any right, title, estate or interest in or to a Parcel or any portion thereof shall be deemed conclusively to have agreed, that each term, covenant, condition and agreement contained in this Declaration shall be (a) a burden on each Parcel and shall be appurtenant to and for the benefit of all other Parcels, (b) covenants permitted to run with the land under Utah law or incidental to such covenants and, as such, also permitted to run with the land under such Title and (c) inure to the benefit of and shall be binding upon the Owners, and their respective successors and assigns and all those (including mortgagees) holding under any of them.

10.2 Duration of Restrictions. This Declaration shall be effective as of the date on which it is recorded in the Official Records, and shall continue in full force and effect until 11:59 p.m. on December 31, 2090; provided, however, that (a) this Declaration shall be automatically renewed for additional ten (10) year terms unless sooner terminated unanimously by the Owners, and (b) the easements referred to in Article II and elsewhere herein, which are specified as being perpetual or as continuing beyond the term of this Declaration shall continue in force and effect

as provided herein. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination. Upon termination of any of said restrictions, at the request of an Owner, the owners of all other portions of or interests in the Project shall immediately execute and deliver to such requesting owner such instruments as may be reasonably necessary to evidence the termination of said restrictions on the public record.

10.3 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah and subject to the jurisdiction of the courts of the State of Utah in the county in which the Project is located. The invalidity or unenforceability of any part or provision of this Declaration shall not affect the validity or enforceability of any other part or provision.

10.4 Modification of Agreement. Any modification or amendment to this Declaration may be made by Declarant; provided, however, that (except as otherwise provided below) if any such modification or amendment is material as reasonably determined by Declarant, then the approval of Declarant (if Declarant or its affiliate is still an Owner) and at least fifty-one percent (51%) or more (as determined by Proportionate Vote) of the Owners (including Declarant, if Declarant is still an Owner) shall be required. In no event shall any such modification or amendment extinguish any Common Area easement benefiting any of the remaining Owners or materially and adversely impair any of the remaining Owner's use of such Owner's Parcel as contemplated under land use entitlements approved by the applicable Governmental Authority unless consented to by the Owner of such impacted Parcel, which consent shall not be unreasonably withheld. No termination, extension, modification, or amendment hereof will be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded in the Official Records. Notwithstanding the foregoing, Declarant may at any time unilaterally amend this Declaration to annex additional real property to the Project and subject such real property to this Declaration so long as such annexation does not result in an increase in Common Area Maintenance Costs payable by the other Owners or otherwise materially adversely affect their rights and duties hereunder. Notwithstanding the foregoing, all modifications or amendments to this Declaration shall require the approval of any Mortgage holder existing as of the date of such modification or amendment. No modification or amendment to this Declaration shall require the approval of the City or any Person not set forth in this Section 10.4.

10.5 Approvals. Upon receipt by an Owner of a request for approval or request for a vote, an Owner shall, within fifteen (15) days after receipt of such request, notify the Owner making such request of its approval or shall notify the Owner of any objections and specifically stating such objections. Failure to give any written notice of approval or disapproval within the period provided above shall constitute approval by the Owner from whom approval is sought, but only if the request for approval states that failure to disapprove within the specified period shall constitute approval.

10.6 Estoppel. Upon receipt by an Owner of a written request for an estoppel letter or certification that there are no defaults under this Declaration or requesting any other commercially reasonable information typically required in estoppel letter or certificates, an Owner shall, within twenty (20) days after receipt of such request, respond to such request and include, without limitation, an indication that there are no defaults or specifying the nature of such defaults. Failure to give any estoppel within the period provided above shall constitute notice that there are no defaults or affirming the information required, but only if the request for the estoppel states that failure to disapprove within the specified period shall constitute approval.

10.7 Notices. All notices, consents, requests, demands, approvals, waivers and other communications desired or required to be given hereunder (referred to as “**notices**”) shall be in writing and signed by the party so giving the notice, and shall be effective when personally delivered or forty-eight (48) hours after deposit in the United States mail, as certified or registered mail, return receipt requested, first-class postage and fees prepaid, or overnight courier with return receipt, addressed to such address as any Owner shall designate in writing to the other Owners and to Declarant as follows:

If to Declarant: CRP/PDC SLC S. 4400 WEST OWNER, L.L.C.
450 Newport Center Drive, Suite 405
Newport Beach, California 92660
Attn: Legal Department

Anyone entitled to receive notice hereunder may, from time to time, change his or its address for receiving notices by giving written notice thereof in the manner outlined above. Notwithstanding any other provisions in this Declaration for notices of Breach, the mortgagee of any Owner in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Declaration; provided, however, that said mortgagee shall have, prior to the time of the Breach, notified the party hereto giving said notice of default of the mortgagee’s mailing address and requested notice of any Breach.

10.8 Costs of Enforcement. If an Owner brings an action at law or in equity to enforce or interpret this Declaration, the prevailing Owner in such action shall be entitled to recover reasonable attorney’s fees and court costs and expert witness fees for all stages of litigation, including, but not limited to, appellate proceedings, in addition to any other remedy granted.

10.9 No Waiver. The failure of any Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Owner may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Owner of any default under this Declaration shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.

10.10 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

10.11 No Third Party Beneficiary. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third party Person, nor shall any third party Person be deemed to be a beneficiary of any of the provisions contained herein.

10.12 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, epidemic or pandemic resulting in a declared national or state imposed state of emergency with the imposition by federal, state or local governmental authorities of quarantine or "shelter-in-place requirements which government actions result in the inability to perform, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section 10.13 shall not operate to excuse any Person from the prompt payment of any monies required by this Declaration.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

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

DECLARANT: WEST
CRP/PDC SLC S. 4400 OWNER, L.L.C.,
a Delaware limited liability company

By: CRP/PDC SLC S. 4400 Venture, L.L.C.,
a Delaware limited liability company
Its Sole Member

By: Phelan-TC/JB, LLC,
a Delaware limited liability company
Its Authorized Member

By: TLC Investments, LLC,
a Delaware limited liability company
Its Manager

By: 
TERESA CORRAL, Manager

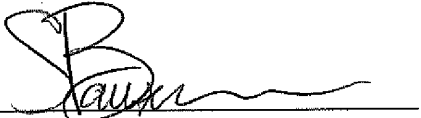
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF Colorado)
COUNTY OF Douglas) ss.

On Nov. 12, 2020, before me, Sydney Bauserman Notary Public, personally appeared Teresa Corral, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), 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.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL.

Signature  [Seal]

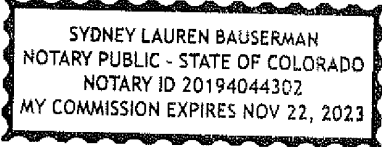
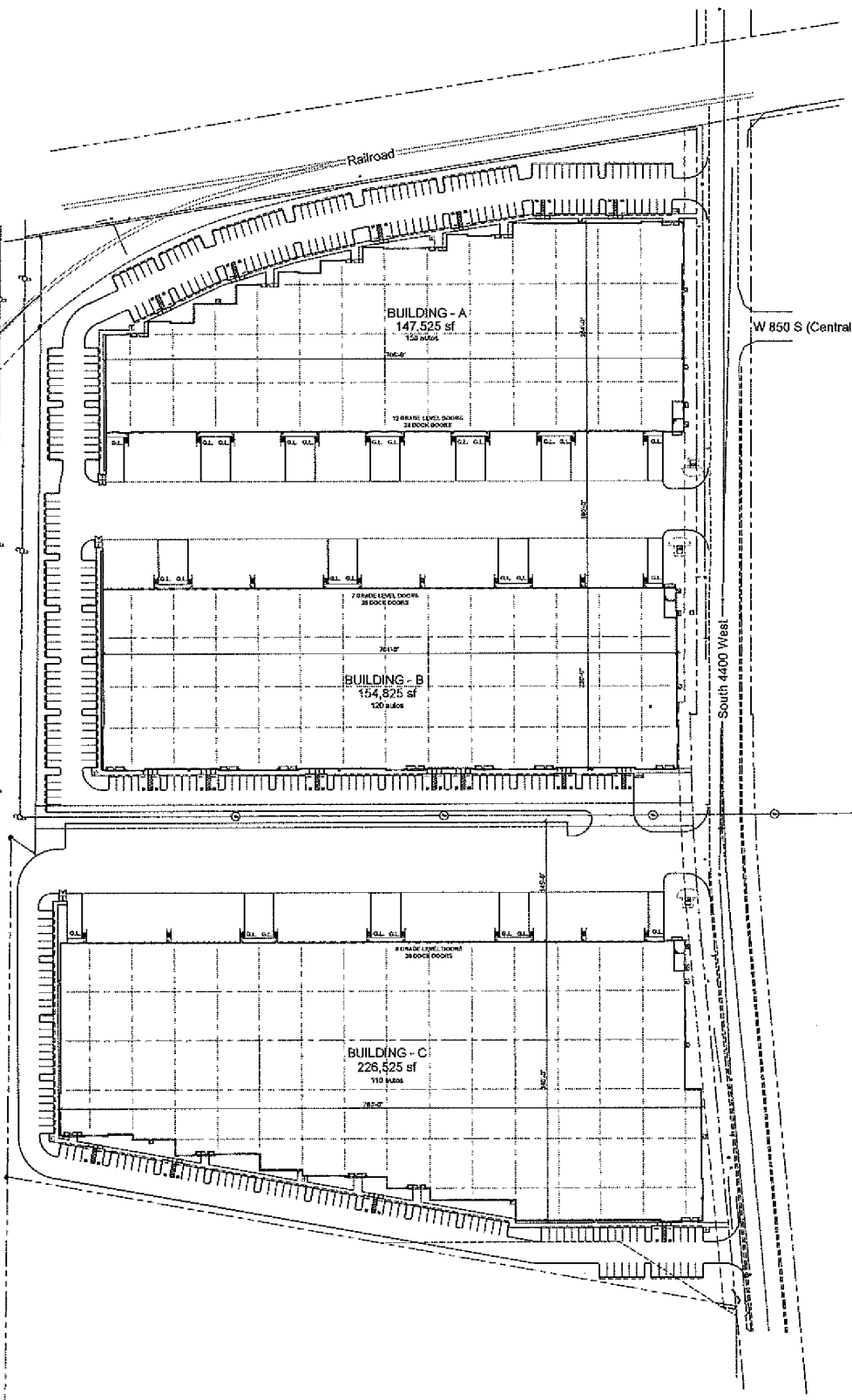


EXHIBIT "A"

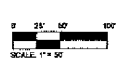
SITE PLAN

LOT AREA:	1,000,625 sq ft 24.34 acres
NET LOT AREA:	1,028,585 sq ft 23.49 acres
TOTAL BUILDING AREA:	528,875 sq ft
BUILDING A: (12 GL DOORS, 28 DOCK DOORS)	147,525 sq ft
BUILDING B: (7 GL DOORS, 18 DOCK DOORS)	154,825 sq ft
BUILDING C: (8 GL DOORS, 18 DOCK DOORS)	226,525 sq ft
SITE COVERAGE (on GROSS):	49.87 %
SITE COVERAGE (on NET):	51.67 %
DOCK DOOR RATIO:	175,225 sq ft
PARKING REQUIRED:	208 spaces
OFFICE (147,525 sq ft @ 200 sq ft)	106 spaces
WAREHOUSE (154,825 sq ft @ 25,000 sq ft)	36 spaces
Warehousing (226,525 sq ft @ 14,000 sq ft)	122 spaces
PARKING PROVIDED:	386 spaces
STANDARD:	204 spaces
HANDICAP ACCESSIBLE:	34 spaces



SITE PLAN

NorthWest Commerce Center
Salt Lake City, Utah



PHELAN
DEVELOPMENT
450 Newport Center Drive, Suite 405
Newport Beach, CA 92660

Calvin J. Coatsworth Architects, PC
275 S. Main Street, Suite 1000, Salt Lake City, UT 84111

EXHIBIT "B"

LEGAL DESCRIPTION OF THE PROJECT

The land referred to is situated in Salt Lake City, County of Salt Lake, State of Utah, and is described as follows:

Beginning at a point South 89°59'50" East 2578.61 feet along the center section line and North 0°00'10" East 87.20 feet, from the West 1/4 corner of Section 7, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 79°49'02" West 903.15 feet; thence North 0°51'12" East 413.12 feet; thence South 56°15'48" East 35.72 feet; thence North 0°51'12" East 750.42 feet to a point on the Los Angeles and Salt Lake Railroad Company southerly fence line; thence North 80°46'24" East 810.63 feet along said fence line to a point on the westerly right of way of 4400 West Street; thence South 0°14'57" West 711.59 feet along said line to a point on the right of way line 4400 West Street, as shown on Entry No. 9551097, recorded and on file at Salt Lake County Recorder's Office, State of Utah; thence along said right of way the following three (3) courses, (1) South 88°44'40" West 8.24 feet to a point on a 3000.00 foot radius non-tangent curve to the left, with a radius which bears South 89°56'01" East, (2) southerly along the arc of said curve 276.72 feet, through a central angle of 5°17'06", and (3) thence South 5°13'07" East 446.97 feet, to the point of beginning.

County Tax Parcel No.: 15-07-127-001

Common Address: 926 South 4400 West, Salt Lake City, UT 84104

Also known as: Lots 1, 2, and 3, Phelan Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder on January 14, 2021 as Entry Number 13533508, Book 2021P, Page 015.