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**DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS
FOR
ANTELOPE AND MAIN COMMERCIAL SUBDIVISION**

THIS DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS FOR ANTELOPE AND MAIN COMMERCIAL SUBDIVISION (this "*Declaration*") is executed this 5th day of November, 2021, by TFC ANTELOPE AND MAIN, LLC, a Utah limited liability company ("*TFC*"), and by ANTELOPE LAYTON LLC, a Utah limited liability company ("*AL*"), as the Owner of "Lot 1" (defined below), which also signs this Declaration for the purpose of binding such Lot 1 to the terms of this Declaration.

RECITALS

A. Declarant and AL (collectively, the "*Owners*") are the owners of certain real property in Layton City (the "*City*"), Davis County, Utah, more particularly described on Exhibit A attached hereto. Declarant and AL desire to establish the Property as a commercial development to be known as "Antelope and Main Commercial Subdivision" (the "*Shopping Center*"). The Shopping Center shall consist of four (4) subdivided, commercial lots, one of which includes an existing building owned by AL which is operated as an Extra Space storage facility. One of the lots in the Shopping Center, owned by AL, is more particularly described on Exhibit A-1 attached hereto and incorporated herein by reference ("*Lot 1*"), one of the lots, owned by Declarant, is more particularly described on Exhibit A-2 attached hereto and incorporated herein by reference ("*Lot 2*"), one of the lots, owned by Declarant, is more particularly described on Exhibit A-3 attached hereto and incorporated herein by reference ("*Lot 3*"), and one of the lots, owned by Declarant, is more particularly described on Exhibit A-4 attached hereto and incorporated herein by reference ("*Lot 4*"). For the avoidance of doubt, Lot 1, Lot 2, Lot 3 and Lot 4 may be referred to collectively as the "*Property*" or the "*Lots*". Lots 2, 3 and 4 are hereby referred to as the "*Declarant Lots*".

B. Declarant and AL deem it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration, and by signing below.

DECLARATION

In consideration of the foregoing, Declarant and AL hereby declare as follows:

1. **DECLARATION.**

1.1. Declaration. Declarant, with respect to Lots 2, 3 and 4, and AL, with respect to Lot 1, hereby create a commercial real estate development project named "Antelope and Main Commercial Subdivision" on the Property and declare that the Property shall be held, sold, leased

and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.2. Covenants Running With the Land. All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, AL, the Owners (as such term is defined below), and all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

2. DEFINITIONS. For purposes hereof:

2.1. "Building Area" shall mean the area, located within a Lot, labeled "Building Areas" on the Site Plan. Canopies may encroach from the Building Area over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

2.2. "Common Areas" shall mean: (a) all areas in a Lot that are not within the Building Area on such Lot; together with (b) those portions of the Building Area on such Lot which at any time are not actually covered by a building or cannot under the terms of this Declaration be used for a building; together with (c) those improvements, located on the areas referred to in the preceding items (a) and (b), which are intended and designed for use as parking areas for vehicles, driveways, sidewalks, and landscaped areas, as the areas and improvements defined and described by the foregoing part of this item (c) may exist or be composed from time to time.

2.3. "Common Area Costs" means any and all costs, expenses and liabilities incurred by or on behalf of Manager, specifically related to maintaining the Common Areas located within the Shopping Center in a reasonably clean, orderly, attractive, and usable condition and in a good state of maintenance and repair consistent with other first-class retail shopping centers of similar size and age within the Davis County, Utah area including costs, expenses and liabilities for performing the obligations of Manager as set forth in Section 8 below (or in any Property Management Agreement) with respect to the Common Areas, which costs shall be paid by the Lot Payee as set forth in Section 10 below, including but not limited to:

(a) Manager's reasonable expenses for services in connection with its obligations associated with managing, operating, improving, repairing, replacing and maintaining of such Common Areas, but only to the extent that the foregoing is not performed with respect to such Common Areas by Layton City, an applicable services district or other governmental or quasi-governmental agency or utility, or an Owner as required herein (and provided that other than the management fee payable under a Property Management Agreement, such expenses shall not include any reimbursement for salaries or wages of any employees of Manager, but shall include reimbursement for Manager's reasonable costs of insurance);

(b) levying, collecting and enforcing the obligation of an Owner to pay such Common Area Costs;

(c) electrical costs associated with lighting within the Common Areas, which lighting shall be metered to a single meter installed upon one Lot (determined by Declarant, but not to be Lot 1) and placed in the name of the Owner or occupant of such Lot, in which case such Owner (or occupant) shall cause the utility bills to be provided to Manager for inclusion as part of the Common Area Costs;

(d) a reasonable amount of reserves for any such costs, expenses and liabilities, which reserves shall be held by Manager in a trust account designated for the exclusive purposes of a reserve specifically for the benefit of the Shopping Center;

(e) a reasonable and customary management fee payable to Manager which is at a competitive rate in light of the services rendered by Manager with respect to the Shopping Center;

(f) costs relating to the obligations applicable to the Property under that certain Maintenance Agreement recorded on June 4, 2021 in the official records of Davis County, Utah as Entry No. 1020599-JH, including, without limitation, costs relating to the storm water and parking lot lighting.

“Common Area Costs” does not include any costs to maintain or repair utility lines and related facilities which provide services benefiting only one, but not all, of the Lots (for example, lateral utility lines running to only one of the Lots). Assuming the expense is not paid for by a third party utility company or governmental authority, the full amount of such expense shall be borne by the Owner of the Lot receiving the benefit from such maintenance and/or repair. Furthermore, “Common Area Costs” does not include the disposal, storage or removal of trash, it being agreed that each Owner and/or Permittee shall be responsible to dispose of, store, and remove trash from such Owner’s applicable Lot at such Owner and/or Permittee’s sole expense.

2.4. “**Declarant Affiliate**” is defined in Section 9.1 below.

2.5. “**Design Guidelines**” means the Design Guidelines established by Declarant, a copy of which is attached hereto as **Exhibit D**. The Design Guidelines may be amended in the same manner as this Declaration, as set forth in Section 22.2 below.

2.6. “**Environmental Laws**” is defined in Section 18 below.

2.7. “**EPL Lease**” means that certain Lease Agreement dated June 7, 2021, executed between Declarant and Pocos Locos, LLC, relating to Lot 4, and any amendments, supplements, modifications or replacements thereof.

2.8. “**Floor Area**” shall have reference to the building situated on a Lot, and shall mean, refer to, and include the number of rentable square feet of area at each level or story lying within the exterior faces of the exterior walls of such building, excluding, however: (i) rooftop penthouse areas or rooftop vault areas used for mechanical equipment; and (ii) to the extent the same are located beyond exterior building walls, docks and areas for receiving, loading, or unloading, and patio space and other Outdoor Commercial Facilities. For purposes of determining the “Floor Area”, the measurement shall be made along the lesser of the exterior walls or window lines of each building, and shall exclude vertical penetrations such as fire stairs, architectural features, elevators, columns and shafts. The Floor Area relating to each Lot shall be determined by Declarant in its reasonable discretion (and using customary measurement methodology for retail shopping centers and based on advice from Declarant’s architect), promptly upon the completion of each building within the Shopping Center, and upon such determination, Declarant shall be authorized to record an amendment to this Declaration reflecting such Floor Area. Each Owner or Lot Payee shall have the right to dispute Declarant’s determination of the Floor Area relating to each of the Lots, by providing written notice to Declarant (a “**Remeasurement Notice**”) within ninety (90) days following receipt of written notice from Declarant of Declarant’s determination of the Floor Area relating to such applicable Lot. In the event Declarant receives a Remeasurement Notice with respect to a particular Lot, such Owner or Lot Payee (the “**Disputing Party**”) shall have the right to engage, at its sole

expense, a licensed architect to remeasure the Floor Area of the building constructed on the applicable Lot. In the event that such architect determines that the Floor Area of such Lot is within five percent (5%) of the size of the Floor Area as measured by Declarant, then Declarant's determination shall control. If, however, the Disputing Party's architect's measurement is greater than five percent (5%) apart from Declarant's measurement, then Declarant's architect and the architect of the Disputing Party shall mutually select a third architect, and the third architect shall be engaged to perform a third measurement within thirty (30) days following such engagement. In such event, the Floor Area for such Lot shall be deemed to be the average of the two measurements which are closest in size. The cost of the third architect shall be paid by the party whose measurement is furthest from the measurement made by the third architect. All measurements of Floor Area shall be made in a manner consistent with the definition for Floor Area set forth in this Section 2.8. If any building within the Shopping Center is completed after Declarant (or a Declarant Affiliate) no longer owns any Lots, then the rights and responsibilities of Declarant under this Section 2.8 shall belong to, and be performed by, Manager.

2.9. "**Hazardous Substance**" is defined in Section 18 below.

2.10. "**Initial Property Management Agreement**" is defined in Section 9.1 below.

2.11. "**Initial Property Management Agreement Term**" is defined in Section 9.1 below.

2.12. "**Lot**" shall mean and refer to one of the four (4) Lots described on Exhibits A-1, A-2, A-3, and A-4 attached hereto and incorporated herein by this reference.

2.13. "**Lot Payee**" is defined in Section 10.1 below.

2.14. "**Maintenance and Repair Activities**" is defined in Section 8.1 below.

2.15. "**Major Tenant**" shall mean and refer to a Permittee which has a bona fide, written lease agreement with an Owner (or a written sublease agreement with the tenant of the Owner), pertaining to at least forty percent (40%) of all leasable space located within the building constructed upon such Owner's Lot, pursuant to which such Major Tenant operates or anticipates operating a business upon such Lot in compliance with this Declaration.

2.16. "**Manager**" shall mean a person designated to perform the obligations of "Manager" under Section 9 of this Declaration, as more fully set forth in Section 9 below.

2.17. "**Mortgage**" shall mean and refer to both a recorded mortgage and a recorded deed of trust, and "**Mortgagee**" shall mean and refer to both the mortgagee under a recorded mortgage and the beneficiary under a recorded deed of trust.

2.18. "**Outdoor Commercial Facility**" shall mean and refer to a commercial structure or facility, such as a drive-in or drive-through facility, patio space, trash enclosure areas, or other similar facility that is not enclosed or fully enclosed, that is intended to be used or controlled by the Owner or tenant of the Lot on which such structure or facility is located, and that is not intended for use in common with other Owners or tenants. Notwithstanding anything in the Site Plan to the contrary, Outdoor Commercial Facilities are not included as part of the Common Areas.

2.19. "**Owner**" shall mean and refer to the party which at the time concerned is the owner of record (in the office of the County Recorder of Davis County, Utah) of a fee or of an undivided fee interest in the Lot or in any portion of the Lot concerned (including, without limitation, in the building located on such Lot). In the event there is more than one Owner of the Lot involved at the

time concerned, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

2.20. "**Permittees**" shall mean the tenants or occupants of the Lots, and the respective employees, agents, contractors, customers, invitees and licensees of: (a) the Owners of such Lots, and/or (b) such tenants or occupants.

2.21. "**Plans**" is defined in Section 3.2 below.

2.22. "**Plat**" shall mean the collective reference to the following duly approved and recorded plats filed in the office of the Davis County Recorder entitled: (i) Antelope and Main Commercial Subdivision Plat, which plat has previously been filed with the Davis County Recorder's office; and (ii) all future plats for future phases of the Antelope and Main Subdivision, if any.

2.23. "**Prohibited Use**" shall mean each of the following uses:

(a) Any use in violation of applicable governmental laws, ordinances, codes, and regulations;

(b) Any use which constitutes a public or private nuisance;

(c) Any use which produces noise or sound which may be heard outside of any building on the Property and is objectionable due to intermittence, beat, frequency, shrillness or loudness;

(d) Any use which produces any noxious odor or which may be smelled outside any building on the Property other than such odors as are typically incidental to first class retail operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;

(e) Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);

(f) Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction shall not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Shopping Center;

(g) Any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation;

(h) Any mobile home or trailer court, mortuary, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Shopping Center;

(i) A cocktail lounge, bar, tavern or nightclub (except in connection with a restaurant so long as the sale of alcohol does not exceed sixty percent (60%) of such restaurant's gross sales), disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, or amusement arcade;

(j) Any operation for drilling for and/or removal of subsurface substances, including but not limited to oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind;

(k) Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

(l) Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions, and strip clubs and the like, and marijuana dispensers;

(m) Any use involving automobile sales;

(n) Any second hand store or auction house, flea market, fire sale, bankruptcy or going out of business sale business, or marijuana dispensers;

(o) Except with respect to the portion of the Shopping Center leased to the tenant under the EPL Lease, for so long as the EPL Lease is in force and effect, no portion of the Shopping Center shall be used primarily as a restaurant or food outlet featuring the sale of prepared chicken and featuring Mexican food. For the purpose of the preceding sentence, "featuring" shall mean deriving more than fifteen percent (15%) of the amount of annual gross sales of such restaurant or food outlet from the sale of such product or type of food. Notwithstanding the foregoing, this exclusive use provision shall not apply to (i) Take 5 and (ii) Extra Space Storage (i.e., Lot 1) at the Shopping Center.

(p) Except with respect to the portion of the Shopping Center leased to the tenant under the Take 5 Lease, for or so long as the Take 5 Lease is in force and effect, no portion of the Shopping Center (other than the Leased Premises) may be used primarily as a lube shop; provided, however, that this exclusive use covenant shall not apply to (i) existing tenants and such tenants' subtenants, successors, assigns or replacements, (ii) any tenant occupying more than 10,000 square feet, or (iii) incidental uses. For purposes of the preceding sentence, "primarily" means in excess of fifty-one percent (51%) of sales.

Furthermore, for so long as Declarant owns one or more of the Lots, Declarant shall have the right to amend this Declaration by inserting additional "Prohibited Uses," provided that any such additional Prohibited Uses (1) relate to reasonable and customary (so-called) "exclusive use" rights which Declarant may desire to grant in the future to restaurant or retail businesses desiring to operate upon any Lot, under any other future leases relating to any portion of the Lots; (2) shall not conflict with the foregoing Prohibited Uses described in this Section, and (3) shall be subject to any use rights granted to occupants of any portion of the Shopping Center (and not in violation of this Declaration) prior to the date of such amendment by Declarant. Notwithstanding anything in this Agreement to the contrary, Lot 1 is expressly permitted to be used as a self-storage facility and no additional prohibited uses shall be imposed on Lot 1 without the prior written consent of its Owner.

2.24. "**Property Management Agreement**" means the property management agreement, if any, entered into by or on behalf of the Owners and a Manager relating to the Shopping Center, including but not limited to the Initial Property Management Agreement (as defined in Section 9

below), as further described in Section 9 below. The Property Management Agreement, if any, shall be consistent with the terms of Sections 9 and 10 below.

2.25. "**Proportionate Share**" means (a) with respect to Lot 1, twenty five percent (25%), and (b) with respect to Lots 2, 3 and 4, an aggregate of seventy five percent (75%), allocated pro rata to such Lots 2, 3 and 4 based upon the percentage obtained by dividing the Floor Area allocated to any of Lots 2, 3 or 4 pursuant to Section 2.8 above, by the total Floor Area of Lots 2, 3 and 4 (from time to time), as also determined pursuant to Section 2.8 above. Notwithstanding anything in this Agreement to the contrary, the actual Floor Area of Lot 1 shall have no effect on the Proportionate Share of Lot 1.

2.26. "**Rules and Regulations**" means any instrument adopted by Manager in its reasonable business judgment for the regulation and management of the Shopping Center and which are generally applicable to the Shopping Center, and which are implemented, enforced, and amended from time to time by Manager in its reasonable business judgment. However, if an amendment to the Rules and Regulations of the Shopping Center Declaration (1) directly or materially affects the access to, visibility of or parking on a Lot; or (2) would result in a material increase in financial obligations for an Owner or Major Tenant; or (3) modifies Section 2.23 (titled "Prohibited Uses") in a manner which would purport to materially alter a Major Tenant's ability to engage in activities upon its Lot which are consistent with such Major Tenant's then-existing business activities, and are not Prohibited Uses hereunder prior to such amendment (collectively, a "**Major Amendment to Rules and Regulations**"), then the Owner of any such affected Lot along with any Major Tenant leasing space within such affected Lot must also consent to such Major Amendment to Rules and Regulations. The initial Rules and Regulations of the Shopping Center, as adopted by the initial Manager, are attached hereto and incorporated herein as Exhibit C.

2.27. "**Shopping Center**" shall mean and refer to the tract comprised of all of the Lots.

2.28. "**Site Plan**" shall mean and refer to the Site Plan attached hereto as Exhibit B and incorporated herein by this reference. The Site Plan shows, among other things, the Lots, the Building Area, and the Common Areas within each Lot.

2.29. "**Take 5 Lease**" means that certain Lease Agreement dated April 30, 2021, executed between Declarant and Blue Lube, LLC, relating to Lot 3, and any amendments, supplements, modifications or replacements thereof.

3. **BUILDING LOCATION, DESIGN, AND CONSTRUCTION.**

3.1. *Building Location.* Each building, Outdoor Commercial Facility, or other structure now or hereafter placed or constructed upon a Lot shall be located only within the Building Area of such Lot; provided, however, that: (i) canopies and roof overhangs (including columns or pillars supporting them), normal sub-surface footings and foundations, signs affixed to buildings, and doors for ingress and egress may project from a Building Area into the adjacent Common Areas; (ii) any drive-in or drive-through facility, patio dining area, or trash enclosure area, contemplated by the Site Plan may be constructed generally consistent with the Site Plan (even though such drive-in or drive-through facility, patio dining area, or trash enclosure area, may extend beyond the Building Area on the Lot concerned), so long as any portion of such drive-in or drive-through facility, patio dining area, or trash enclosure area, which is outside the Building Area is wholly located within the Lot such drive-in or drive-through facility, patio dining area, or trash enclosure area, is intended to serve; and (iii) any drive-in or drive-through facility that is hereafter constructed or reconfigured on a Lot may in part extend beyond the Building Area on the Lot concerned, so long as the portion of such facility extending beyond the Building Area is wholly located within the Lot intended to be served

by such facility, consists of only drive lanes, reader boards, and/or communication equipment, and does not adversely affect access between the Lots.

3.2. *Design of Improvements within Shopping Center.* No construction of a building or other structure of any kind shall be erected, placed or maintained on any portion of the Declarant Lots except within the Building Area of each Declarant Lot. In order to insure compliance with the Design Guidelines for all improvements to be constructed upon the Declarant Lots (or with respect to any additions, remodeling, reconstruction, or any other alterations which materially changes the exterior of the structure), prior to submission to Layton City, a detailed set of plans comprised of a site plan, foundation plan, floor plan, elevations of all sides, and exterior design ("*Plans*") shall be submitted to Declarant for approval. The Plans submitted to Declarant for approval shall also include a detailed set of plans for the Common Area improvements (including, without limitation, landscaping plans) to be constructed by the Owner in accordance with Section 4 below. If Declarant rejects the Plans for not complying with the Design Guidelines, the submitting party and Declarant shall mutually consult to establish approved Plans for the proposed work. Declarant shall not withhold approval of the Plans or recommend changes in the Plans which otherwise conform to the requirements of the Design Guidelines, nor shall Declarant withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing structure, or substantially change an existing structure. Approval of Plans by Declarant shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety of the Plans, nor shall such approval constitute a representation or warranty that the Plans comply with governmental requirements. No material deviation shall be made from the approved Plans without approval by Declarant in accordance with this Section 3.2. After Declarant (or a Declarant Affiliate) no longer owns any Declarant Lots, then the rights and responsibilities of Declarant under this Section 3.2 shall belong to, and be performed by, Manager. Each Owner shall reimburse Manager for the reasonable out-of-pocket costs of architects and other professionals retained by Manager to review the Plans; provided that neither Manager nor Declarant shall be entitled to any reimbursement with respect to the initial review of Plans for new construction. Notwithstanding anything to the contrary herein, Lot 1 is expressly excluded from compliance with this Section 3.2.

3.3. *Construction Activities.* In the event a building or Outdoor Commercial Facility is constructed, altered, remodeled, or repaired on a Lot, the Owner of such Lot shall cause all of the following to be the case in connection with such construction or alteration: (a) the area where construction is occurring shall be fenced off or otherwise segregated so as not to interfere with the course of business in the remainder of the Shopping Center, and shall be maintained in as neat and dust-free a condition as is reasonably possible; (b) the construction activities involved shall be performed with reasonable diligence, and any ladders, scaffolding, barricades, and the like shall be promptly removed upon completion of the work; (c) if the construction activities damage improvements to the Common Areas, such damage shall be repaired as soon as reasonably possible; (d) the construction activities shall not interfere any more than is reasonably necessary with the normal use of and access over Common Areas located elsewhere than on the Lot containing the building or Outdoor Commercial Facility that is the subject of the construction; (e) all construction materials and equipment shall be removed from the Common Areas as soon as reasonably possible following completion of the construction activities; and (f) the construction activities shall not cause damage to any building or other improvement located upon another Lot within the Shopping Center, nor shall such activities interrupt utilities services provided to another Lot in a manner which would limit or restrict customary business operations from being conducted upon such Lot. Any portion(s) of a Building Area on a Lot that may remain after a building or Outdoor Commercial Facility has been constructed within such Building Area shall be developed by the Owner of such Lot and thereafter maintained as Common Areas, if and to the extent that and for as long as such portion(s) are not, as a result of the size or configuration thereof or as a result of the above-established

limitation on the Floor Area of the building which may actually be constructed, usable practically or legally as the Lot of a building or Outdoor Commercial Facility.

3.4. *Mechanical Equipment, Dumpsters and Storage.* Any rubbish or debris of any kind shall be placed in dumpsters enclosed within enclosures designed to be compatible with the overall architecture of the Shopping Center, within each Lot as depicted in the Site Plan. However, trash receptacles may be placed on sidewalks within the Shopping Center. All mechanical equipment located on a Lot shall be screened from view. Outdoor storage is strictly prohibited.

4. **IMPROVEMENT AND USE OF COMMON AREAS.** In conjunction with the construction and completion of any building or Outdoor Commercial Facility situated on a Lot, the Owner of the Lot concerned shall install, at its own expense, the Common Area improvements on said Lot that are contemplated by the Site Plan, and/or that are reasonably necessary or desirable in connection with the full development of the Shopping Center as a first-class retail center. No buildings or structures shall be placed or constructed in the Common Areas (except as may otherwise be provided in the Site Plan), provided that directional signs, paving, bumper guards or curbs, landscape planters, lighting standards, trash enclosures (with all trash being screened from view from the parking areas), and the pylon and monument signs provided for in Section 11 of this Declaration may be placed or constructed in the Common Areas. In order to insure compliance with the Design Guidelines, all plans for Common Area improvements (and plans for alterations or modifications of existing Common Area improvements) on a Lot (including, without limitation, landscaping plans), excluding Lot 1, shall be approved in advance by Declarant in accordance with Section 3.2 above. After Declarant (or a Declarant Affiliate) no longer owns any Lots, then the rights and responsibilities of Declarant to approve plans for Common Area improvements (or plans for alterations or modifications of existing Common Area improvements) under this Section 4 shall belong to, and be performed by, Manager.

Any alteration of the Common Area improvements by an Owner shall be at the Owner's own expense and shall be done in compliance with, and not result in any violation of, either this Declaration or applicable legal requirements. The Common Areas on each of the Lots shall be used for vehicular driving and parking, pedestrian traffic, landscaping, and/or related or incidental purposes. No promotional or selling activities shall be undertaken or engaged in such Common Areas.

5. **EASEMENTS FOR ACCESS AND PARKING.** Each Lot shall have appurtenant to it and be benefitted by a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and for vehicular parking on, over, and across all of the access ways, driveways, roads, sidewalks, pathways, and parking areas comprising portions of the Common Areas, as such Common Areas may exist from time to time, and each Lot shall be subject to and burdened by such nonexclusive easement benefitting each other Lot allowing such use on a 24 hours per day 7 days per week basis.

Except as may be otherwise required by applicable law or as may be reasonably necessary or appropriate during periods that construction activities are ongoing or during periods that improvements may be unsafe or unusable due to damage or destruction, and except for the building which may be constructed on a Lot, there shall not be constructed or erected within any of the Lots or on the perimeter of any of the Lots, any fence, wall, barricade, or other substantial obstruction, whether temporary or permanent in nature, which materially limits or impairs access between the Lots or the ability to have an unobstructed view of each of the Lots or the improvements situated thereon. The Owner of each Lot shall be responsible for ensuring that the provisions of this Section are not violated by any activities occurring or improvements constructed on the Lot owned by such Owner.

6. **EASEMENTS FOR UTILITY FACILITIES.**

6.1. *Generally.* Each of the Lots shall have appurtenant thereto and shall be benefitted by a nonexclusive easement for the laying, installation, operation, servicing, repair, maintenance, removal, and/or replacement of underground utility lines, sewer lines, wires, conduits, and related facilities (including, but not limited to, the Sewer Line (described in Section 6.3), underground lines, wires, conduits, and facilities for telephone, other communication, electricity, natural gas, other fuels or power sources, sewage, storm drainage, and all types of water) through such portions of each of the other Lots as are, at the time concerned, either unimproved (and not planned or intended by the Owner of the Lot concerned as the Lot of a building or Outdoor Commercial Facility) or are Common Areas and reasonably susceptible of such use. Said portions of each of the Lots shall be subject to and burdened by such nonexclusive easement benefitting each of the other Lots. The lines, wires, conduits, and other facilities that are installed by the Owner of a Lot on another Lot shall be sufficiently strong and shall be buried deep enough so that they can withstand, without damage, surface vehicular traffic of the type reasonably expected on such other Lot. In the event the easement rights provided for in this Section are exercised, the Owner of the Lot intended to be served thereby shall pay or cause to be paid the cost involved and at its sole cost shall restore or cause to be restored to substantially their previous condition any improvements on any of the Lots which may be damaged as a result of such exercise. Each utility line, connection, installation, or other facility or utility-related facility which is located anywhere within any of the Lots shall, to the extent reasonably practical, be located underground.

6.2. *Storm Drainage.* Without limiting the generality of the foregoing, it is recognized that a storm water drainage system shall be constructed consisting of a combination of surface drainage, underground storm drainage lines, and a storm water detention area (as reflected on the Site Plan). All reasonably necessary easements for the existence and operation of such drainage system are hereby created.

6.3. *Relocation of Sewer Line.* The Owners hereby agree, at TFC's sole cost and expense, the existing sewer line currently running under a portion of the Lots and servicing the existing lots to the north of the TFC Lots shall be relocated by TFC to accommodate TFC's anticipated development of such TFC Lots. The Owners agree that following such relocation, they will be responsible for the maintenance and repair of the portion of the sewer line underneath such Owner's respective Property. The Owners hereby establish and grant, for the benefit of the owners (and their successors and assigns) of the lots serviced and to be serviced by such sewer line, a non-exclusive easement for the perpetual use, operation, maintenance and repair of such sewer line.

7. OPERATION AND MAINTENANCE OF BUILDINGS AND OUTDOOR COMMERCIAL FACILITIES. The Owner of each Lot shall be obligated to maintain, at its own expense and in reasonably good and attractive order, condition, and repair, the building (and, if present, any Outdoor Commercial Facility) situated on that Lot. No provision of this Declaration is intended to mean or shall be construed to mean that any building or Outdoor Commercial Facility on any Lot cannot be razed or removed at any time or must be restored or reconstructed in the event the same is damaged or destroyed. However, should any such building or Outdoor Commercial Facility be damaged or destroyed, the Owner of the Lot on which such building or Outdoor Commercial Facility is or was located either (i) shall cause such building or Outdoor Commercial Facility to be restored (subject to the design approval process set forth in Section 3.2 above), or (ii) shall cause whatever remains of such building or Outdoor Commercial Facility to be razed, all debris to be removed, and the Lot of such building or Outdoor Commercial Facility to be paved and in a level, clean, and sightly condition pending construction of a replacement. The construction required to accomplish the state of affairs described in whichever of the foregoing items (i) and (ii) is to be the case shall be commenced as soon as reasonably possible, and shall be completed, in the case of razing, within 120 days after the date of damage (unless a longer period is needed because of adverse weather conditions) or, in the case of restoration, within 18 months after the date of damage.

8. **OPERATION AND MAINTENANCE OF COMMON AREAS.**

8.1. *Maintenance and Repair Activities.* The Common Areas located within the Shopping Center shall be kept in a reasonably clean, orderly, attractive, and usable condition and in a good state of maintenance and repair consistent with other first-class retail shopping centers of similar size and age within the Davis County, Utah area. In this regard, and without limiting the generality of the previous sentence, the Common Areas shall be maintained consistent with the following activities (collectively, the "*Maintenance and Repair Activities*"):

(a) Maintaining all surfaces within the Common Areas, including but not limited to sidewalks, pathways, roadway and parking areas in a level, smooth, and evenly-covered condition with the type of surfacing material originally installed or such substitute as is in all respects at least equal in quality, use, and durability, and making reasonable repairs to, and replacing from time to time such surfaces (consistent with other first-class retail shopping centers of similar size and age within the Davis County area);

(b) Removing all papers, debris, filth, and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair, and replacing as needed any necessary or appropriate directional signs, markers, and lines;

(d) Operating, keeping in repair, and replacing, as necessary, such artificial lighting facilities as are reasonably required;

(e) Maintaining all landscaped areas (including regular mowing of all grassy areas) and making such replacements of shrubs and other landscaping as is reasonably necessary;

(f) Maintaining storm drains and storm water detention areas included as part of the Common Areas;

(g) Removing refuse and accumulations of snow from the access ways, driveways, roads, sidewalks, pathways, and parking areas included within the Common Areas; and

(h) Taking any other customary actions as may be reasonably necessary or appropriate to operate and regulate the use of Common Areas.

8.2. *Responsibility to Perform.* Subject to Section 9 and 10 below, the Maintenance and Repair Activities shall be performed by Manager at the expense of the Owners. If a Manager ceases to serve for any reason, including by reason of removal or the expiration or earlier termination of a property management agreement, until a replacement Manager is properly appointed in accordance with Section 9.2 below, each Owner shall be responsible for performing the Maintenance and Repair Activities for the Common Areas located within its Lot at such Owner's sole cost and expense.

9. **APPOINTMENT OF MANAGER.**

9.1. *Appointment of Initial Manager.* Declarant hereby reserves the right and authority, for so long as Declarant (or an affiliated entity of Declarant which is under common ownership or control as Declarant (a "*Declarant Affiliate*")) owns any Lot within the Shopping Center, to appoint a Manager to manage and oversee all of the Maintenance and Repair Activities described in Section 8

above that are to be performed upon all of the Lots. Furthermore, Declarant represents that it has retained and entered into a legally binding property management agreement (the "*Initial Property Management Agreement*") with an affiliated entity of Declarant, TerraForm Management, LLC, as the initial Manager of the Shopping Center, the term of which agreement expires on the date which is two (2) years following the date that no Declarant or Declarant Affiliate owns any Lot within the Shopping Center (the "*Initial Property Management Agreement Term*"), provided that following such Initial Property Management Agreement Term, the term of the Initial Property Management Agreement shall automatically renew for successive one (1) year periods unless canceled by the initial Manager or the Owners (pursuant to Section 9.2 below) at least sixty (60) days prior to the expiration of the then applicable term. Declarant shall provide a copy of such Initial Property Management Agreement to each Owner (or tenant within a Lot) upon the request of such party.

9.2. *Removal and Replacement of Manager.* At end of the Initial Property Management Agreement Term, or in the event that Declarant otherwise waives or releases its right to appoint Manager (as evidenced by a written instrument recorded in the Davis County Records), or in the event that the Initial Property Management Agreement is terminated by Declarant and the initial Manager, the Owners owning a majority of the Floor Area within the Shopping Center shall appoint another person to act as Manager hereunder (which replacement Manager may also be an Owner). Thereafter, the Owners owning a majority of the Floor Area within the Shopping Center shall have the responsibility to continue to appoint, and subject to the terms of any applicable Property Management Agreement, remove, a replacement Manager so that there is one (1) Manager appointed at all times during the term of this Declaration. Each replacement Manager shall be responsible for the performance of the Maintenance and Repair Activities and all other duties of Manager set forth in this Declaration. For the purposes of this Section 9, Lot 1 shall be deemed to have Floor Area equal to twenty-five percent (25%) of the total Floor Area within the Shopping Center.

9.3. *Manager's Purposes and Powers.* Any Manager appointed pursuant to this Section or by separate approval by the Owners shall perform all of its duties and responsibilities set forth in this Declaration and any Property Management Agreement relating to the Common Areas in a commercially reasonable manner. After Declarant (or a Declarant Affiliate) no longer owns any Lots, then the rights and responsibilities of Declarant to approve Plans under Sections 3.2 and 4 above shall belong to, and be performed by, Manager. In the performance of its duties and responsibilities, Manager may be permitted to provide services itself (if Manager is qualified to provide such services), or it may contract with other qualified persons to provide such services. Without limiting the generality of the foregoing, Manager may contract with architects and other professionals to review Plans under Sections 3.2 and 4 above.

9.4. *Limitation of Liability of Manager.* Manager shall exercise reasonable business judgment in performing all of its duties and responsibilities set forth in this Declaration and any Property Management Agreement. Notwithstanding anything herein to the contrary, and only if otherwise provided in any Property Management Agreement, unless fraud, gross negligence or willful misconduct shall be proven by a court order, judgment, decree or decision which has become final, Manager shall not be liable or obligated to the Owners or other person for any mistake of fact or judgment or for the doing or failure to do of any act in conducting and performing its obligations herein, which causes or results in any loss or damage to any Owner or any other such person.

10. COMMON AREA COSTS.

10.1. *Generally.* Common Area Costs arising in connection with Manager's performance of its duties under Sections 8 and 9 and/or a Property Management Agreement, shall be borne by each of the Owners, and/or their respective tenants in accordance with the terms of their respective leases

relating to the Lots (the "*Lot Payee*"), on a Proportionate Share basis. Manager is directed by the Owners to bill the Owners, or their respective tenants under the terms of the Leases, on no more than a monthly basis, for the Proportionate Share of the Common Area Costs. All such bills shall contain an itemized description of the work performed, copies of invoices, and the total costs and expenses incurred for such work. Each Lot Payee shall pay all such bills within thirty (30) days after receipt of the bill.

10.2. *Failure to Pay; Audit.* In the event a Lot Payee fails to timely pay any bill, the unpaid amount shall bear interest at the rate of ten percent (10%) per annum from the due date until the date such amount is paid in full. Additionally, in the event that the Lot Payee's failure to pay a bill continues beyond ninety (90) days after it is due, then following delivery of an additional five (5) day written notice to the Owner and Lot Payee (if other than the Owner), Manager shall be entitled to record a Notice of Lien against the applicable Lot in the total amount due and owing, subject to Section 10.3 below. Notwithstanding the foregoing, if the Lot Payee gives written notice, prior to the expiration of such ninety (90) day period, that it is contesting the amount or payment of the bill in question, and provided that the Lot Payee also either posts a bond in favor of Manager or pays into escrow the amount being contested pending resolution, then Manager shall not be entitled to record a Notice of Lien against the Lot Payee's Lot. The Lot Payee, and its agent or representatives, shall be permitted, upon seventy-two (72) hours advance written notice to Manager, to review Manager's records and supporting documentation for any bill submitted by Manager pursuant to this Section. Any such review shall be conducted in a manner so as to minimize interference with Manager's business operations. Any dispute with respect to Manager's calculations of the Proportionate Share of the Common Area Costs assessed to Lot Payee shall be resolved by Manager and such Lot Payee through consultation in good faith within thirty (30) days. If following the expiration of such thirty (30) day period however, Manager and Lot Payee continue to dispute such amounts, Lot Payee may retain at its sole expense a national, independent, certified public accountant (working on an hourly basis) to audit Manager's records to determine the proper amount of Lot Payee's Proportionate Share. If such audit reveals that Manager has overcharged Lot Payee, then within thirty (30) days after the results of such audit are made available to Manager, Manager shall credit Lot Payee with the amount of such overcharge and reassess any Lot Payee undercharged based on such review of the Proportionate Share of Common Area Costs. If the audit reveals that Lot Payee was undercharged, then within thirty (30) days after the results of the audit are made available to Manager and Lot Payee, Lot Payee shall reimburse Manager the amount of such undercharge, and any overpaying Lot Payee following such review shall receive a corresponding credit. Manager shall maintain records of all Common Area Costs for the entirety of a three-year period ("*Review Period*") following Manager's delivery to Lot Payee of each statement setting forth Lot Payee's Proportionate Share of Common Area Costs. The payment by Lot Payee of any portion of Common Area Costs shall not preclude Lot Payee from questioning the correctness of it at any time during the Review Period, but the failure of Lot Payee to object thereto prior to the expiration of the Review Period shall be conclusively deemed Lot Payee's approval of same. Despite anything in this Section to the contrary, Lot Payee's right to review Manager's books and records pertaining to Common Area Costs shall be restricted to one (1) time per calendar year and shall be completed within ninety (90) days after Lot Payee delivers its notice to Manager requesting such inspection. In no event shall Lot Payee's right to audit relieve Lot Payee (if other than the Owner) of its obligation to pay all amounts due as tenant under its respective lease.

10.3. *Priority of Notice of Lien.* A Notice of Lien filed by Manager pursuant to Section 10.2 above shall be prior to all other liens and encumbrances on a Lot except liens and encumbrances recorded prior to the recordation of this Declaration, a first-position Mortgage, and liens for real estate taxes and other governmental assessments or charges against the Lot.

11. **SIGNS.** Declarant does not intend to install any so-called "pylon signs" for the common use of all Lots within the Shopping Center. Any signage (including pylon or monument signage) shall be

provided with respect to each Lot, if at all. All signage shall be designed to be architecturally compatible with the design theme for the Shopping Center, and no monument or pylon signs other than those authorized by the foregoing provisions shall be permitted within the Shopping Center. All signs must comply with applicable zoning and other governmental requirements, and with the signage criteria set forth on Exhibit E attached hereto. Further, all of the signage installed within the Shopping Center (other than building and drive-thru signage) shall be illuminated from dusk until 2:00 a.m., seven (7) days a week, three hundred sixty five (365) days a year.

12. **INSURANCE.**

12.1. *Liability Insurance Maintained by Owners.* The Owner of each Lot shall at all times and at its own expense pay for and maintain in effect public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about, or by reason of activities within, such Owner's Lot. Such insurance shall be written on an "occurrence" (rather than a "claims made") basis and shall be carried with responsible companies. The limits of such insurance shall be such as to afford at least the coverage provided by a "combined single limit" of \$2,000,000.00, with a deductible of not more than \$10,000.00. The named insureds under such insurance shall be the respective Owners of the Lots and such additional party or parties (having an interest in a Lot) as any of the Owners direct the insuring Owner in writing to have named as an insured. The insuring Owner shall, upon the written request of any party which then has an interest in any other Lot (including the Mortgagee under any first-position Mortgage affecting any other Lot), furnish to such party a certificate of insurance issued by or on behalf of the insurer, evidencing that the liability insurance required by this Section to be carried by the insuring Owner is in force. The liability insurance policy required by this Section may not be canceled or reduced in amount or coverage below the requirements of this Section without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured. The act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds. The liability insurance policy required by this Section shall provide for contractual liability coverage with respect to the indemnity obligations set forth in this Declaration. Each Owner may satisfy its obligations under this Section 12.1 through insurance policies carried by a tenant of an Owner on behalf of such Owner.

12.2. *Liability Insurance Maintained by Manager.* The Manager shall at all times and as a Common Area Cost pay for and maintain in effect public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about, or by reason of activities within the Common Areas. Such insurance shall be written on an "occurrence" (rather than a "claims made") basis and shall be carried with responsible companies. The limits of such insurance shall be such as to afford at least the coverage provided by a "combined single limit" of \$2,000,000.00, with a deductible of not more than \$10,000.00. The named insureds under such insurance shall be the Manager, the respective Owners, Major Tenants, and such additional party or parties (having an interest in a Lot) as any of the Owners direct the insuring Owner in writing to have named as an insured. The insuring Owner shall, upon the written request of any party which then has an interest in any other Lot (including the Mortgagee under any first-position Mortgage affecting any other Lot), furnish to such party a certificate of insurance issued by or on behalf of the insurer, evidencing that the liability insurance required by this Section to be carried by the insuring Owner is in force. The liability insurance policy required by this Section may not be canceled or reduced in amount or coverage below the requirements of this Section without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured. The act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds.

12.3. *Casualty Insurance.* Furthermore, the Owner of each Lot shall at all times and at its own expense pay for and maintain in effect all-risk / property policy with special form insurance coverage on all buildings and other improvements (including Common Areas) located upon all Lot(s) owned by such Owner, including loss or damage by fire and such other risks as are from time to time included in the all-risk / property policy with special form coverage insurance policies customarily issued in Utah, in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. Each Owner may satisfy its obligations under this Section 12.2 through insurance policies carried by a tenant of an Owner on behalf of such Owner.

12.4. *Insurance Coverage during Construction.* Prior to commencing construction activities within the Shopping Center, each Owner or Permittee shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the following minimum insurance coverages: workers' compensation insurance in the amount required by applicable law or regulation; employer's liability insurance in the amount of \$1,000,000; general commercial liability insurance covering premises and operations, products and completed operations, contractual liability, broad form property damage, explosion, collapse, underground hazards, and personal injury liability in the amount of \$2,000,000 per occurrence; automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired and non-owned automobiles, with limits of liability of not less than \$1,000,000; and umbrella/excess liability insurance in the amount of \$5,000,000 (to be carried by the general contractor). If the construction activity involves the use of another Owner's Lot, the Owner of such other Lot shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount of coverage below the requirements of this Section, without at least thirty (30) days' prior written notice to the insureds and each additional insured. If such insurance is canceled or expires, the constructing Owner shall immediately stop all work on or use of the other Owner's Lot until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner with certificate(s) of insurance with respect to all insurance required by this Section.

12.5. *Waiver of Subrogation.* The Owners and Permittees each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner, or Permittee or their respective property, either real or personal, arising from any risk generally covered by the Owner's property insurance described in Section 12.2 above. The Owners shall use reasonable efforts to obtain, if needed, appropriate endorsements to the Owners' property insurance policies with respect to the foregoing waiver; provided, however, that failure to obtain such endorsements shall not affect the waiver hereinabove given. In addition, the Owners shall cause the insurance companies issuing the Owners' property insurance to waive any right of subrogation that the insurance companies may have against the other Owners. It is the intent of Declarant that with respect to any loss from a peril required to be covered under an Owner's property insurance policy required by Section 12.2 above, that the Owners shall look solely to their respective insurance company for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the state where the Shopping Center is situated, and provided further that no policy of insurance is invalidated thereby.

13. **INDEMNIFICATION.** The Owner of each Lot shall indemnify, defend, and hold harmless the Owner of each other Lot and each Major Tenant of each other Lot from and against any and all liability, damages, expenses, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage (i) arising from or out of any occurrence in or upon the indemnifying Owner's Lot, unless caused in whole or in part by the act or neglect of the Owner of the other Lot; or (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner or its Permittees.

14. **TAXES.** The Owner of each Lot shall pay or cause to be paid, prior to delinquency, all real property or ad valorem taxes and assessments that are levied against such Lot or any part thereof.

15. **USE RESTRICTIONS.** Each of the Lots shall be used only for commercial purposes of the type normally found in a retail shopping center. No Lot shall be used for a Prohibited Use.

16. **EMINENT DOMAIN.** Nothing in this Declaration shall be construed to give any Owner any interest in any award or payment made to the Owner of any other Lot in connection with any exercise of eminent domain or transfer in lieu thereof affecting such other Lot or giving the public or any governmental body any rights in such other Lot. In the event of any exercise of eminent domain or transfer in lieu thereof that occurs with respect to any Lot, the award made with respect to such Lot shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owner of any other Lot. However, any Owner whose Lot is not taken may file collateral claims against the condemning authority for such Owner's losses which are separate and apart from the value of the land area and improvements that are taken from another Lot. In the event part of a Lot is condemned or is transferred in lieu of condemnation, the Owner of such Lot shall promptly repair and restore the remainder of the Lot as nearly as practicable to the condition the Lot was in immediately prior to such condemnation or transfer, to the extent that the proceeds of the condemnation award or compensation are sufficient to pay the cost of such restoration and repair, and without contribution from any other Owner; provided, however, that if such repair and restoration would not be practicable in view of the use then being made of the Lot, none shall be required. Nothing in this Section is intended to or shall prevent a tenant from making a claim against an Owner, pursuant to the provisions of any lease between the tenant and the Owner, for all or part of any condemnation-related award or payment.

17. **COVENANTS TO RUN WITH LAND.** This Declaration and all of the easements, covenants, restrictions, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land, and shall be binding upon and shall inure to the benefit of the Owners, the respective Owners from time to time of the Lots, any other party which has, acquires, or comes to have any interest in or which occupies or comes to occupy a Lot, their respective grantees, transferees, tenants, heirs, devisees, personal representatives, successors, and assigns, and the licensees, employees, customers, and invitees of all of the foregoing parties. This Declaration and all of the provisions hereof shall be binding upon each Lot, and all interests in each Lot shall be subject to this Declaration and all of such provisions. By acquiring, in any way coming to have any interest in, or occupying a Lot, the party so acquiring, coming to have such interest, or occupying consents to, and agrees to be bound by, this Declaration and all of the provisions hereof.

18. **HAZARDOUS SUBSTANCES.** No Owner nor Permittee shall use, produce, store, release, dispose or handle in or about the Shopping Center or transfer to or from the Shopping Center (or permit any other party to do such acts) any Hazardous Substance (defined below) except in compliance with all applicable Environmental Laws (defined below). No Owner or Permittee shall construct or use any improvements, fixtures, or equipment or engage in any act on or about the Shopping Center that would require the procurement of any license or permit pursuant to any Environmental Law. Each Owner shall immediately notify the other Owners and Manager of (i) the existence of any Hazardous Substance on or about such Owner's Lot that may be in violation of any Environmental Law (regardless of whether such Owner is responsible for the existence of such Hazardous Substance), (ii) any proceeding or investigation by any governmental authority regarding the presence of any Hazardous Substance on such Owner's Lot or the migration thereof to or from any other property, (iii) all claims made or threatened by any third party against such Owner relating to any loss or injury resulting from any Hazardous Substance, or (iv) such Owner's notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Leased Premises. "*Environmental Laws*" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene, or the environment, including without limitation, the federal Comprehensive Environmental Response, Compensation, and

Liability Act. "**Hazardous Substance**" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Law. If it is determined that any Hazardous Substance exists on the Shopping Center resulting from any act of an Owner or its Permittees, then such Owner shall, at such Owner's cost and expense, immediately take necessary action to cause the removal of the substance and shall remove such within ten (10) days after discovery. Notwithstanding the above, if the Hazardous Substance is of a nature that cannot be reasonably removed within ten (10) days Owner shall not be in default if Owner has commenced to cause such removal and proceeds diligently thereafter to complete removal, except that in all cases, any Hazardous Substance must be removed within sixty (60) days after discovery thereof. Furthermore, notwithstanding the above, if in the good faith judgment of Manager or the other Owners, the existence of such Hazardous Substance creates an emergency or is of a nature which may result in immediate physical danger to persons at the Shopping Center, Manager or other Owners may enter upon such Owner's Lot and remove such Hazardous Substances and charge the cost thereof to such Owner. Such Owner shall fully indemnify and defend Manager and the other Owners against all Hazardous Substance removal, cleanup and other environmental remediation costs and all other claims arising out of or relating to the generation, use, transportation or disposal of Hazardous Substances or other substances at, upon or from the Shopping Center by such Owner or its Permittees, including claims for fines or penalties. The foregoing cleanup, defense and indemnity obligations shall survive the termination of this Declaration.

19. **REMEDIES AND ENFORCEMENT.**

19.1. *All Legal and Equitable Remedies Available.* In the event of a default or threatened default by any Owner or its Permittees of any of the terms, easements, covenants, conditions or restrictions hereof, the other Owner(s) and all Major Tenants shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

19.2. *Remedies Cumulative.* The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

19.3. *No Termination for Default.* Notwithstanding the foregoing to the contrary, no default hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Property made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

20. **TITLE AND MORTGAGE PROTECTION.** A breach of any of the covenants, restrictions, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot. A breach of any of the covenants, restrictions, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee or trustee interested under any Mortgage affecting a Lot shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, restrictions, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a properly recorded Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such

amendment. Notwithstanding the foregoing, if Mortgagee fails to respond within thirty (30) days from the date Declarant or the Owners mail (by overnight courier) a request for consent to a proposed amendment to this Declaration, such Mortgagee shall be deemed to have consented to the proposed amendment provided to the Mortgagee and the Mortgagee's rights under its Mortgage shall be subject to such proposed amendment upon the completion of the amendment process identified in Section 22.2 below.

21. **DEFAULT AND ENFORCEMENT.** The Owner of any Lot and/or any Major Tenant shall have the right to enforce, through appropriate proceedings at law or in equity, such of the easements, covenants, restrictions, provisions, and requirements of this Declaration as are intended to benefit the Lot in which such Owner and/or Major Tenant is interested. In addition, in the event the Owner of any Lot defaults in performance of any of its obligations under this Declaration, the Owner of any other Lot shall have the right, upon the expiration of 30 days following written notice of such default given to both the defaulting Owner and the Mortgagee under any properly recorded first-position Mortgage which may then affect the Lot owned by the defaulting Owner (unless efforts to effect a cure of a non-monetary default have been instituted within said period and are thereafter diligently pursued to completion), to perform in the defaulting Owner's stead and thereafter to be reimbursed by the defaulting Owner, upon demand, for all costs, expenses, and damages incurred or reasonably expended by reason of the default, together with interest thereon at the rate of 10% per annum and reasonable attorneys' fees (including those incurred in connection with any appeal). If any action is brought because of a default under or to enforce or interpret any of the easements, covenants, restrictions, provisions, or requirements of this Declaration, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

22. **MISCELLANEOUS.**

22.1. *Attorneys' Fees.* In the event any party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

22.2. *Amendment.* Except as otherwise provided in this Section, any provision contained in this Declaration may be amended by, but only by, an instrument filed for record with the County Recorder of Davis County, Utah which is executed by at least seventy five percent (75%) the Owners, so long as the Owner of Lot 1 executes such amendment. If an amendment to this Declaration (1) directly or materially affects the access to, visibility of or parking on a Lot; or (2) would result in a material increase in financial obligations for an Owner or Major Tenant; or (3) modifies Section 2.24 (titled "Prohibited Uses") in a manner which would purport to materially alter an Owner or Major Tenant's ability to engage in activities upon its Lot which are consistent with such Owner or Major Tenant's then-existing business activities, and are not Prohibited Uses hereunder prior to such amendment (collectively, a "*Major Amendment to Declaration*"), then the Owner of any such affected Lot along with any Major Tenant leasing space within such affected Lot must also consent to such Major Amendment to Declaration.

Notwithstanding the foregoing, Declarant may amend this Declaration without the approval of any other Owners (except that AL shall consent to such amendment) for so long as Declarant (or a Declarant Affiliate) owns one or more Lots; provided however, that in the case of a Major Amendment to Declaration, the Owner of any such affected Lot, along with any Major Tenant leasing space within such affected Lot, must also consent to such Major Amendment to Declaration by Declarant.

22.3. *Contributions from Third Parties.* Nothing in this Declaration shall limit or shall be construed to limit the right of an Owner to require, pursuant to leases, contracts, or other agreements entered into with tenants, lessees, sublessees, contract buyers, or other third parties, contribution from said tenants, contract buyers, or other third parties toward any of the obligations or expenses required to be paid by such Owner under this Declaration, including but not limited to the Common Area Costs.

22.4. *Release Upon Transfer.* From and after the time an Owner conveys by a properly recorded deed legal title to the Lot owned by it or is otherwise divested of legal title to the Lot owned by it, such Owner shall be relieved of all liabilities and obligations which under this Declaration are imposed upon the Owner of the Lot concerned (except such liabilities or obligations as may have already accrued but not previously been discharged).

22.5. *Partial Invalidity.* The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any Owner, Mortgagee, other party, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any Owner, Mortgagees, other parties, or circumstances other than those as to which a holding of invalidity is reached shall not be affected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

22.6. *No Rights in Public; No Implied Easements.* Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Shopping Center.

22.7. *Non-Merger.* This Declaration and all of the easements, covenants, restrictions, provisions, and requirements hereof shall apply and be in effect and shall at all times continue to exist and apply as regards to each Lot, even though two or more of the Lots may be owned or may come to be owned by the same party. The legal doctrine of merger shall not be applied to render inapplicable or ineffective, or no longer applicable or effective, as regards to any of the Lots, either this Declaration or any of the easements, covenants, restrictions, provisions, or requirements hereof.

22.8. *Duration.* This Declaration and all of the provisions hereof (except any provisions hereof which by their terms may cease to be effective at an earlier time) shall remain effective until this Declaration is terminated and extinguished by an instrument, filed for record in the office of the County Recorder of Davis County, Utah, executed by: (i) all of the Owners; and, in addition, (ii) the Mortgagee under each properly recorded Mortgage then affecting any of the Lots.

22.9. *Interpretation.* The captions which precede the Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include each other gender. This Declaration shall be governed by and construed in accordance with the laws (excluding the choice-of-laws rules) of the State of Utah.

****Signature on the following page****

EXHIBIT A

(Legal Description of the Property)

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 4th NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ANTELOPE DRIVE AND WESTERLY LINE OF FORBES SUBDIVISION PLAT "A" AMENDED, SAID POINT BEING NORTH 00°03'10" EAST 58.00 FEET AND SOUTH 89°47'00" WEST 502.16 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°47'00" WEST 487.92 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF ANTELOPE DRIVE; THENCE NORTH 35°21'39" WEST 9.85 FEET; THENCE NORTH 89°58'57" WEST 19.11 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE NORTH 36°47'00" WEST 383.95 FEET ALONG SAID RIGHT OF WAY LINE TO THE SOUTHERLY LINE OF ARBY'S SUBDIVISION; THENCE ALONG SAID SOUTH BOUNDARY LINE THE FOLLOWING (4) FOUR COURSES: (1) NORTH 53°13'00" EAST 98.00 FEET; (2) NORTH 36°47'00" WEST 65.00 FEET; (3) NORTH 53°13'00" EAST 33.42 FEET; (4) SOUTH 89°56'50" EAST 676.71 FEET TO A POINT ON THE EXTENSION OF THE WESTERLY BOUNDARY OF FORBES SUBDIVISION PLAT "A" AMENDED SUBDIVISION; THENCE SOUTH 00°03'10" WEST 443.83 FEET ALONG SAID WESTERLY BOUNDARY TO THE POINT OF BEGINNING.

CONTAINS 6.590 ACRES, MORE OR LESS

4 LOTS

EXHIBIT A-1

(Legal Description of Lot 1)

Lot 1 of the Antelope and Main Commercial Subdivision

EXHIBIT A-2

(Legal Description of Lot 2)

Lot 2 of the Antelope and Main Commercial Subdivision

EXHIBIT A-3

(Legal Description of Lot 3)

Lot 3 of the Antelope and Main Commercial Subdivision

EXHIBIT A-4

(Legal Description of Lot 4)

Lot 4 of the Antelope and Main Commercial Subdivision

EXHIBIT B

(Site Plan)

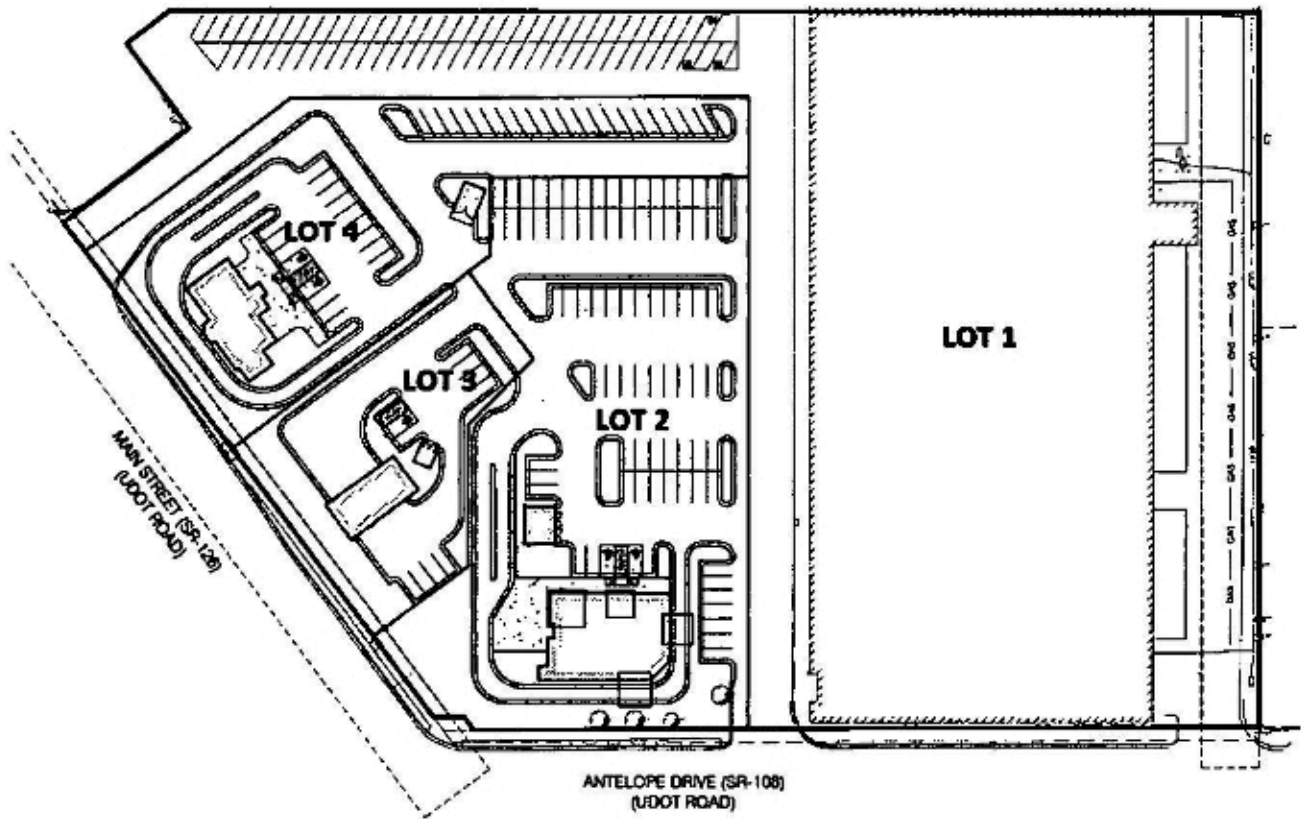


EXHIBIT C

(Rules and Regulations)

The initial Rules and Regulations relating to the Shopping Center are as follows:

1. All delivery and shipping of merchandise, supplies and fixtures, and all loading and unloading of goods, shall be done only at such reasonable times and areas which do not unreasonably disturb or disrupt the ordinary business activities of other occupants within the Shopping Center.
2. No person shall use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which permission to use such area is given.
3. No employee shall use any parking space for motor vehicle parking which is immediately adjacent to and abuts a building located upon the Shopping Center. Further, no employee with respect to any business operating on a Lot shall park on any other Lot, and no employee shall interfere with or block access to any other Lot or drive-thru facilities located thereon.
4. No person without the express written consent of Manager shall:
 - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other material whatsoever within the Common Areas;
 - b. Distribute any circular, booklet, handbill, placard or other material within the Common Areas;
 - c. Solicit membership in any organization, group, or association or contribution for any purpose within the Common Areas;
 - d. Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Areas by any Owner or Permittee, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interest of any business establishments within the Project;
 - e. Throw, discard, or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles or create litter or hazards of any kind; or
 - f. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Common Areas.
6. The outside area (excluding the patio space referred to in any lease) immediately adjoining a building shall be kept clean and free from dirt and rubbish by each Owner or its Permittees to the reasonable satisfaction of Manager, and no Owner shall place or permit any obstructions or merchandise in such areas.

EXHIBIT D

(Design Guidelines)

Building Design:

- **Context.** All building designs shall consider surrounding or nearby buildings and developments and implement design solutions which are sensitive to those nearby buildings and developments. The review of this requirement shall be based on the following:
 - the buildings positively contribute to the overall character of the Shopping Center;
 - the buildings reflect the character of the Shopping Center through use of some similar positive and desirable features;
 - the buildings demonstrate imaginative design; and
 - where proposed building designs closely copy or mirror surrounding development, the buildings vary colors, materials, or architectural elements.
- **Entrances.** All building entrances shall be clearly articulated to indicate a transition from the exterior to the interior of the building. Every main entrance shall have a special emphasis when compared to the other portions of the building. This shall be accomplished through the use of at least three of the following near entrances:
 - a prominent architectural feature that is unique to the overall building design;
 - complimentary yet differing building materials or colors;
 - increased use of windows or glass;
 - pedestrian amenities that may include patios, porches, special paving treatments, seating areas, or awnings; or
 - increased landscaping.
- **Façade Articulation.** Buildings designed with completely flat façades and monotone color schemes are not permitted. All buildings shall demonstrate articulation of all façades.
 - Horizontal or vertical façade variations shall occur at least every 30 feet or along a minimum of 60% of the horizontal length of buildings with facades 100 feet or greater. This shall be accomplished by using methods such as:
 - variation in the surface plane that may include pop-outs, bays, and recesses;
 - variation in the surface pattern such as arches, banding, and paneling; or
 - distinguished treatment of windows, doors, and eaves that may include molding or framing.
 - Buildings with façades 85 feet or greater in total length shall have at least one significant façade

variation from the primary wall plane whose depth is at least two feet length and whose width is at least 20% of the total façade length. There shall be no uninterrupted façades 85 feet or greater in length.

- **Height and Roofline.** All buildings shall demonstrate an appropriate roof height that is compatible with the building's location, and vary rooflines in order to add architectural interest and avoid the appearance or sense of monotonous roofline expanses. All buildings shall:
 - demonstrate appropriate roof height for the location based on zoning regulations and the height of buildings within the immediate area;
 - provide roofline and parapet variations where there are long, continuous, and undisturbed rooflines 50 feet or greater;
 - use similar materials and colors on the back of false-fronts, parapets, cornices, or other parts of the building which extend beyond the roofline or main building so that the building appears cohesive from all views; and
 - provide for screening of mechanical equipment and systems that need to be mounted on the roof. Any minimal portion of these pieces of equipment that may not be fully shielded shall be painted a color which is compatible with the roofing or parapet materials.
- **Massing.** Buildings shall have a composition which clearly relates to the buildings within the Shopping Center.
- **Materials.** Quality long-lasting materials shall be required for all buildings in order to contribute to the aesthetics of the community over the long term. Permanence in design and construction will add to the overall value and sustainability of the community.
 - A minimum of three colors per elevation shall be required.
 - Color utilization should be sensitive to existing development within the vicinity and the natural landscape in which the project is situated.
 - Brick, stone, ceramic tile, wood fiber/composite siding, and concrete masonry units (CMU), are acceptable primary materials. CMU must be colored and feature decorative or architectural finishes such as honed, scored, offset or split face. Gray CMU block is not an acceptable finished building material and shall not be permitted on any finished building elevation. Secondary materials may include exposed concrete, vinyl, stucco, wood siding or metal components. Materials such as awnings, wood timbers and other similar features will be considered accent and not figured into the totals of primary and secondary materials. The following guidelines shall apply when designing a commercial or industrial building:
 - Each building face shall have a minimum of two primary materials. At least 30% of each building's finished face shall be primary materials. No more than 50% of a buildings finished face shall be constructed of any one primary material.
 - Doors, glass and roofing materials are excluded in the calculations of primary and secondary materials.
 - All projects shall submit a sample board containing actual samples of all exterior surface

materials, including roofing materials, in all the colors they will be used. No photos shall be permitted.

- **Pedestrian Considerations.** Buildings designed at the human scale effectively relate to pedestrians and create inviting and hospitable commercial districts that encourage pedestrian activity and social interaction. All buildings shall consider pedestrians as an integral part of the design. Additionally, buildings that contain more than one story or that are above 20 feet in height shall provide a clearly articulated and more detailed base that relates to pedestrians.
- **Signs.** Signs located on any building façade shall be compatible with the building's overall design. As an integral design element, signs shall be compatible with the style of the buildings in terms of location, scale, color, and lettering.
 - The locations for signs on a building's façade shall be planned for as part of the building's overall design.
 - Signs located on façades should integrate similar or complimentary materials as the building.
- **Windows.** Windows are key to the overall design of a building and the relationship between the exterior and interior. The majority of windows shall relate to the scale of the person.
 - Windows should be at eye-level when possible and provide for transparency into the building.
 - Where buildings are adjacent to pedestrian walkways, transparent windows shall be used to relate the scale of the building and the building's interior to pedestrians. Where transparent windows may not be desirable, tinted windows, false windows, or glass block shall be used.
 - Window awnings are an effective way to add detail and variation to a building, emphasize pedestrian scale windows, and create an exciting and inviting environment. When placing awnings:
 - quality materials shall be used which are durable and are able to withstand extremes in the weather;
 - colors should be complimentary to the color of the building on which the awning is located; and
 - styles should be compatible with the architectural features and overall architecture of the building on which the awning is located.

Site Design

- **Landscaping.** Drought resistant shrubs and trees should be used wherever possible in conjunction with efficient low water use irrigation systems.
- **Lighting.** Carefully planned lighting schemes shall have the effect of creating safe environments for pedestrians and motorists. Lighting shall also be considered an integral design element which adds to the overall site plan and building design.
 - Lighting schemes should include coordinating parking, wall, and pedestrian scaled fixtures which compliment building architecture and site features.

- Sensitively placed low-light landscape lighting that highlights a site's desirable features is encouraged.
- Signs. The primary purpose of signs is to clearly identify businesses. Signs shall be integrated into the overall design of a commercial development including materials, and shall add to the quality of the built environment without contributing to visual clutter.

EXHIBIT E

(Signage)

Individual monument signs for any Lot shall comply with governing agency guidelines and shall be at the expense of the Lot owner.