

WHEN RECORDED, RETURN TO:
NOVASOURCE DEVELOPMENT, L.C.
2180 South 1300 East, Suite 410
Salt Lake City, UT 84106
Attn: Betty A. Davis

~~CHECK
CALLEEN PESHELL, Recorder
Filed By KHL
For NOVASOURCE DEVELOPMENT LC
TOOELE COUNTY CORPORATION~~

E 187030 B 778 P 53
Date 6-SEP-2002 10:51am
Fee: 45.00 Check
CALLEEN PESHELL, Recorder
Filed By KHL
For NOVASOURCE DEVELOPMENT LC
TOOELE COUNTY CORPORATION

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of this 21st day of August, 2002, by **NOVASOURCE DEVELOPMENT, L.C.**, a Utah limited liability company (the "Developer").

RECITALS

WHEREAS, Developer is the owner of certain real property located in the City of Tooele, County of Tooele, State of Utah, more particularly described on Exhibit "A," (the "Property") attached hereto and made a part hereof; and

WHEREAS, the Property will be subdivided by Developer, consistent with the Site Plan ("Site Plan") attached hereto as Exhibit "B," and by this reference incorporated herein; and

WHEREAS, in order to effectuate the development, common use and operation of the Property, Developer desires to create certain covenants, conditions, restrictions and agreements as a part of a general plan and to grant certain reciprocal easements in, to, over and across the Property.

DECLARATION

Developer hereby declares that all of the Property shall be held, sold, conveyed, mortgaged and occupied subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall run with such real property and shall be binding upon all Owners having any right, title or interest in the Property or any portion thereof, and their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

I. DEFINITIONS

1.1 **"Building"** shall mean the structure or structures to be constructed on each Tract.

1.2 **"Building Areas"** shall mean the area or areas designated and set forth within each separate Tract on the Site Plan.

1.3 "Common Areas" shall mean those portions of the Property which are not Building Areas, provided those portions of the Building Areas upon which an Owner is not obligated to construct (or does not construct) buildings pursuant to this Declaration shall be deemed to be Common Area until such time as construction of buildings thereon commences.

1.4 "Owner" shall mean the Developer or any person who becomes the owner of any Tract. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Tract owned by it which accrue during the period of such ownership.

1.5 "Property" shall mean the real property described on Exhibit "A".

1.6 "Site Plan" shall mean the initial site plan attached hereto as Exhibit "B," as may be amended from time to time by the Developer.

1.7 "Tract" shall mean that portion of the Property owned by any Owner.

II. COMMON PLAN

Developer, by this Declaration, intends to establish a common plan for the development of the Property in order to insure the protection and improvement of the Property and as hereinafter set forth, by this Declaration will establish certain easements, covenants, and reservations upon and subject to which the Property will be used, held, leased, sold, or conveyed by Developer.

III. USE OF PROPERTY

3.1 Except as otherwise provided for in this Declaration, the Property and any portion thereof shall be used only for the construction, operation, and maintenance thereon of retail businesses, including without limitation fast food or drive-through restaurants, convenience stores, financial institutions, and related facilities common to neighborhood-community type retail centers. All uses of the Property shall be approved by Developer, in its sole discretion.

3.2 Developer, or its successors and assigns, shall develop the Property in the manner shown on the Site Plan attached hereto as Exhibit "B," as may be amended from time to time by the Developer.

3.3 No Owner shall use, or permit the use of Hazardous Materials on, about, under or in its Tract, or the Property, except 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. For the purpose of this Section, the term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii)

"Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

IV. CONSTRUCTION & REPURCHASE

4.1 General Requirements.

(a) Not more than one (1) building shall be constructed on a Tract, without Developer's prior written approval, which approval shall be in its sole discretion. Except for the building currently located on Lot 1, in no event shall any building on the Property be more than one (1) story or of a height in excess of eighteen (18) feet. For purposes of this subparagraph (a), height shall be measured from finished grade of floor to the highest point of the Building.

(b) Each Building or other improvement (including signs) to be constructed, altered, remodeled, repaired, or reconstructed on the Property shall be designed so that the exterior elevation will be architecturally harmonious and aesthetically compatible with the other Buildings and improvements from time-to-time located on the Property. All construction of Buildings constructed within the Property shall be subject to the prior written approval of the Developer, which approval shall not be unreasonably withheld. All construction, alteration, and repair work relative to the Property shall be accomplished in an expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party, or to the Tract on which the work is being done, or any other Tract on the Property. The Owner undertaking such work shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the affected portion of the Tract upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall indemnify and hold all Owners harmless from all damages, losses, or claims, including reasonable attorney's fees, attributable to the performance of such work.

(c) Unless otherwise approved by Developer, all uses allowed and existing within the Property must include within the Tract upon which such use is located, parking equal to the greater of (i) five (5) spaces per thousand (1,000) square feet of Building Area for a non-restaurant use or ten (10) spaces per thousand (1,000) square feet of Building Area for a restaurant use, or (ii) that required by applicable governmental authorities on its Tract without taking into account the parking which may exist on other Owner's Tract or Tracts.

4.2 Building Improvements.

(a) At least thirty (30) days prior to the commencement of construction on a Tract, each Owner shall submit to Developer for approval exterior elevations, signage plan, site plan and site grading plan (collectively, the "Plans"), covering the construction of the building and other improvements on its Tract. Once approved by Developer, such Plans shall be referred to as the "Approved Plans". If Developer should reject the Plans, the submitting Owner and Developer shall mutually consult to establish approved Plans for the proposed work. Developer shall not arbitrarily or unreasonably withhold approval of the Plans. Approval of Plans by Developer shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the Approved Plans. If Developer does not respond otherwise within thirty (30) days of its receipt of the Plans, the Plans shall be deemed to have been approved by Developer.

(b) Once construction of a building has been commenced on a Tract (i.e. beyond preliminary site work), such building shall be completed in accordance with the Approved Plans.

4.3 Re-purchase Rights. In the event any Owner who acquires a Tract from Developer does not commence construction within one (1) year of the date of its acquisition of such Tract, Developer shall have the right, but not the obligation, to re-purchase such Tract from such Owner. Commencement of construction, for purposes of this Section 4.3, shall mean commencement of pouring of a foundation for the improvements on the Tract. Developer shall have the right, within sixty (60) days after such one (1) year period, to notify Owner in writing of its intent to re-purchase said Tract from such Owner. The purchase price shall be the Initial Purchase Price paid by such Owner to Developer, plus the ad valorem taxes incurred by such Owner from the date of acquisition. Developer shall close on its re-acquisition of such Tract within thirty (30) days after sending Owner its written notice of exercise of its right to re-purchase.

V. EASEMENTS

5.1 Grant and Declaration of Reciprocal Easements. Developer hereby grants to each and every Owner and their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees, and declares for the benefit of each of the respective Tracts within the Property permanent, mutual, reciprocal, and non-exclusive easements and rights to use the Common Areas for the purposes for which they are provided and intended, including, but not limited to, ingress, egress, access, and parking for vehicular or pedestrian traffic, upon or across the parking areas, if any, entrances, exits, driveways, walks, or service drives located within the Common Areas and the use of storm drainage and retention facilities, and other public facilities, directional signs and other areas intended for common use. The easements shall be defined and placed of record in conjunction with the installation. No Owner shall grant any easement for the benefit of any property not within its Tract; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Tract to governmental or quasi-governmental authorities or to public utilities.

5.2 Utility and Service Easements. The Owners shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Areas and buildings to be erected upon the Building Areas.

5.3 Installation, Maintenance and Repair. Each Owner shall be responsible for the installation, maintenance, and repair of all sanitary sewers, storm drains, pipes and conduits, mains and lines and related equipment installed by such Owner on its respective Tract. The grantee of any easement referred to herein shall be responsible as between the grantor and grantee thereof for the installation, maintenance, and repair of all sanitary sewers, storm drains, pipes and conduits, main and lines and related equipment installed pursuant to such grant. Any such maintenance and repair shall be performed only after two (2) weeks notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done without cost or expense to the grantor, and in such manner as to cause as little disturbance in the use of the Common Areas, Building Area, or Tract as may be practicable under the circumstances. The grantee undertaking such work shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the affected portion of the Tract upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work.

5.4 No Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, by any Owner which shall prevent or impair the use or exercise of any of the easements granted herein.

VI. COMMON AREAS

6.1 Use of Common Areas. The Common Areas shall be used for the following purposes only:

(a) The installation, maintenance, and operation of underground common and/or public utilities services serving any of the Building Areas, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits and related facilities on site, storm drainage piping, and retention and detention ponds, and related facilities, and sewage facilities, all of which (except hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground.

(b) The installation, construction, maintenance, repair, replacement, rearrangement, and reconstruction of streets, sidewalks, common driveways, curbs, gutters, traffic control areas, signals, traffic and parking lighting facilities.

(c) The installation, construction, maintenance, repair, replacement, and reconstruction of pylon signs, with appropriate underground electrical connections.

(d) The ingress and egress of customers, visitors, invitees, licensees, of establishments located on the Building Areas and to and from any public streets adjacent thereto.

6.2 Lighting. All parking areas within the Common Areas shall be illuminated during business hours occurring during darkness and for a reasonable period prior and subsequent thereto.

VII. MAINTENANCE

7.1 Maintenance of Building and Tract.

(a) Each Owner covenants and agrees to maintain and keep the exterior portion of the building improvements and the landscaped and Common Areas located on its Tract in good condition and state of repair, in compliance with all governmental laws, rules, regulations, orders and ordinances and consistent with other first-class commercial property in the area. Each Owner further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area and to arrange for regular removal of such trash or garbage.

(b) In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Owner of such Tract shall immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the building improvement so damaged, or (ii) erect other building improvements in such location, or (iii) demolish the damaged portion and/or the balance of such building improvements and restore the cleared area to either a hard surface condition or a landscaped condition until a replacement building is erected. Such Owner shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one of such alternatives. Such Owner shall give notice to each other owner within ninety (90) days from the date of such casualty which alternative it elects.

7.2 Maintenance of Common Areas. Following completion of the improvements of the Common Areas, each Owner shall maintain its respective portions of the Common Areas on its respective Tract in good condition and repair. The maintenance shall include, without limiting the generality of the foregoing, the following:

(a) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.

(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, and free of snow, ice, dirt and debris.

(c) placing, keeping in repair and replacing any necessary or appropriate directional markers and lines.

(d) operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required for adequate lighting.

(e) maintaining all landscaped areas in a thriving and trimmed condition and making such replacements of shrubs and other landscaping as is necessary.

7.3 Common Area Liability Insurance and Taxes. Each Owner shall, at all times, maintain, or cause to be maintained, commercial general public liability insurance affording protection to itself and the other Owners of the Tracts, naming the other parties as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$2,000,000.00 per occurrence, \$3,000,000.00 aggregate. Such insurance may be a part of blanket liability coverage carried by a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.

Each Owner shall pay, or cause to be paid, unless otherwise required by the terms of any lease, directly to the tax assessor, prior to delinquency, all real property taxes and other special taxes and assessments which may be levied or assessed against its Tract, including the portion of the Common Area within its Tract.

7.4 Indemnification. Each Owner shall agree to indemnify, defend and save the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on its own Tract, except if caused by the act or neglect of the Owner seeking indemnification.

7.5 Management of Common Areas. Developer may be responsible for the maintenance of the roads and associated improvements located or to be located within the Common Areas which are not included within the various Tracts. The maintenance shall include, without limiting the generality of the foregoing, snow and ice removal, repair and replacement of surfacing and maintenance of landscaping, walkways, and driveways.

7.6 Reimbursement of Common Area Expenses, Insurance, and Taxes.

Within thirty (30) days after receipt of a statement from Developer, each Owner agrees to reimburse Developer for its "Pro Rata Share" of liability insurance, taxes, and the direct costs, including management, operation, maintenance, repair and improvements of the Common Areas which are not included within the various Tracts. Developer may also charge a service charge of ten percent (10%) of said expenses to cover administration/management fees and overhead costs. The term "Pro Rata Share" as used in this Section shall be the fractional share determined by the fraction, the numerator of which is the total square footage of the Owner's Tract and the denominator of which is the total square footage of the Property. The purchaser of each Tract, or portion thereof, by his acceptance of a deed, covenants and agrees to pay Common Area Assessments imposed hereunder.

VIII. CONDEMNATION

All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "Condemnation Award") attributable to the value of any land within the Common Areas shall be payable only to the Owner thereof and no claim thereon

shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Areas so taken to the extent of any damage suffered by their respective Tracts or Building Areas resulting from severance of the appurtenant portions of the Common Areas so taken. The Owner of the portions of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Areas so condemned less said Owner's costs, including, but not limited to, attorneys' fees and court costs arising out of the condemnation proceedings.

IX. SIGNAGE RESTRICTIONS

Occupant Signs.

(a) At Developer's discretion, Developer may cause to be constructed one freestanding sign on State Highway 36 and one freestanding sign on 1180 North. At Developer's discretion, the identification panels on each sign shall be assigned based upon the space occupied by a tenant.

(b) All exterior building signs on each Tract must be approved in writing by Developer and shall conform with all local ordinances and other applicable regulations of any governmental authority having jurisdiction over the Property. Unless otherwise approved in writing by Developer, no occupant identification sign attached to the exterior of a building shall be: (i) placed on canopy roofs extending above the building roof, placed on penthouse walls, or placed so as to project above the parapet, canopy, or top of the wall upon which it is mounted; (ii) painted on the surface of any building; (iii) flashing, moving or audible signs; (iv) signs employing exposed ballast boxes or exposed transformers; or (v) paper or cardboard signs, temporary signs (except for banner signs on an Owner's Tract stating the occupant's business name, "Coming Soon" or similar information) (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit the placement at the entrance of each occupant's space a small sticker or decal, indicating hours of business, emergency telephone numbers, acceptance of credit cards, and other similar items of information. No other form of exterior expressions, including window painting, banners, pennants, pictures, notices, flags, writings, lettering, designs or graphics, shall be placed or attached to a building.

X. PARKING

Each Owner shall use its best efforts to cause the employees of the occupants of its Tract to park their vehicles only on such Tract, unless otherwise provided for by Developer.

XI. DEFAULTS

11.1 Default. The failure by an Owner (the "**Defaulting Party**") to observe or perform any of the covenants, conditions or obligations of this Declaration, within thirty (30) days after the issuance of a notice by Developer or another Owner (the "**Non-Defaulting Party**") specifying the nature of the default claimed, shall constitute a default hereunder; provided, however, if such condition is of a nature that it cannot be corrected within thirty (30) days, then the Defaulting Party shall not be in default so long as it commences such cure promptly after receiving such notification, and diligently pursues such cure through completion.

11.2 Remedies. With respect to any default hereunder, any Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right upon prior written notice to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Owner shall be responsible for the default of the occupants of its Tract. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest at the highest rate allowed by law, within thirty (30) days of receipt of demand. Any outstanding reimbursement amount hereunder, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be secured by a continuing lien against the Tract of the Defaulting Party, as provided in Section 11.3 below. Each such reimbursement amount, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the Defaulting Party. The personal obligation for delinquent reimbursements shall not pass to successors in title unless expressly assumed by them.

11.3 Lien. Costs and expenses accruing and/or assessed pursuant to Sections 11.1 and 11.2 above shall constitute a lien against the Defaulting Party's Tract. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the County Clerk of the County in which the Property is located, by the Owner making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Non-Defaulting Party;
- (iii) An identification of the owner or reputed owner of the Tract or interest therein against which the lien is claimed;
- (iv) A description of the Tract against which the lien is claimed;

(v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and

(vi) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date, book and page of recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed. The lien so claimed shall attach in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State of Utah. Provided, however, a lien claimed under this Declaration shall be inferior and subordinate to any first lien mortgages on the Property.

11.4 Interest. Any time an Owner shall not pay any sum payable hereunder to another within ten (10) days of the due date, such delinquent Owner shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

(i) The highest rate permitted by law to be paid on such type of obligation by the person obligated to make such payment or the person to whom such payment is due, whichever is less; or

(ii) Three percent (3%) per annum in excess of the prime rate from time to time publicly announced by Zion's Bank or its successor.

11.5 Other Remedies. Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other person, violating or attempting to violate or default upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11.6 No Waiver. 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.

XII. MISCELLANEOUS

12.1 Notices. All notices, demands and requests (collectively the "Notice") required or permitted to be given under this Declaration must be in writing and any present or future law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given or served by registered or certified mail, postage prepaid, return receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip (public or private) and shall be deemed to have been given as of the date such notice is (i) delivered to the Owner intended, (ii) delivered to the then designated address of the Owner intended, or (iii) rejected at the then designated address of the Owner intended. The initial addresses of the Owners shall be:

Developer: NovaSource Development, L.C.
 Attn: Betty A. Davis
 2180 South 1300 East, Suite 410
 Salt Lake City, Utah 84106

Upon at least ten (10) days prior written notice, each person shall have the right to change its address to any other address within the United States of America; provided such address includes a street address, which shall include a building name and/or number, street designation, city, state and zip code.

12.2 Binding Effect; Covenants Run with Land. The terms of this Declaration and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Owners hereunder. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

12.3 Construction and Interpretation.

(a) Whenever required by the context of this Declaration the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

(b) The captions preceding the text of each article and section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.

(c) Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(d) This Declaration may be amended by, and only by, a written agreement signed by all of the then Owners and shall be effective only when recorded in the county and state where the Property is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, an Owner or its Tract without the consent of such Owner.

(e) Notwithstanding any custom, rule of interpretation or construction, or otherwise, this Declaration, or any portion hereof, shall not be construed more strongly against any Owner who prepared it.

(f) This Declaration shall be construed in accordance with the laws of the State of Utah.

12.4 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.

12.5 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. 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.

12.6 Time. Time is of the essence of this Declaration.

12.7 Transfer. Any transferee of any part of the Property shall automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto and to have agreed with the then owner or owners of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration. If any transferor shall expressly condition the transfer of its interest in such portion of the Property on the assumption by its transferee of the obligations imposed on such transferor, such transferor shall upon the completion of such transfer be relieved of all further liability under this Declaration, except such liability as may have arisen during its period of ownership of the portion of the Property so conveyed and which remains unsatisfied.

12.8 Compliance With Laws. Each Owner, without cost or expense to any other Owner, shall promptly comply or cause compliance with all laws, ordinances, rules and regulations of any governmental authority having jurisdiction which may at any time be applicable to its Tract; provided, however, that each Owner shall have the right to contest, by appropriate legal or administrative proceedings diligently conducted in good faith, the validity or application of any such law, ordinance, rule or regulation and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible.

12.9 Term of this Declaration. This Declaration and each easement, covenant, condition, and restriction hereby created shall continue for a period of fifty (50) years from the date hereof, unless terminated, modified, or amended by an instrument executed as herein set forth and duly recorded in the office of the Tooele County Records Office. 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 it relates to

the easements created herein, 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.

IN WITNESS WHEREOF, Developer has executed this Declaration effective as of the day and year first above written.

DEVELOPER:

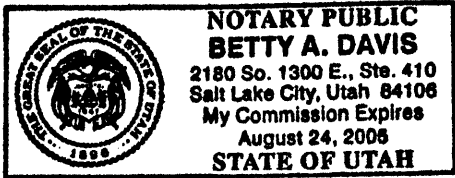
NOVASOURCE DEVELOPMENT, L.C.
a Utah limited liability company

By: Shane D. Frost

Title: Manager

STATE OF UTAH)
)
:ss
COUNTY OF SALT LAKE)

This instrument was acknowledged before me on this 21st day of August, 2002, by Shane D. Smoot, Manager of NovaSource Development, L.C., a Utah limited liability company, on behalf of said limited liability company.



Betty A. Davis
Notary Public

My Commission Expires:
8-24-05

EXHIBIT "A"

Legal Description of Property

A part of the Southeast Quarter of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian, U.S. Survey in Tooele County, Utah:

Beginning at the Southeasterly Corner of Lot 4 of the Tooele Gateway Commercial Subdivision as Amended at a point on the Westerly Line of Utah State Highway 36 being 1192.81 feet South $89^{\circ}43'06''$ West along the Section Line; and 1456.20 feet North $01^{\circ}16'54''$ West from the Southeast Corner of said Section 16; and running thence South $6^{\circ}50'00''$ West 396.62 feet along said Westerly Line of State Highway 36; thence North $83^{\circ}10'00''$ West 225.18 feet to a point on the boundary of Lot 3 in the Tooele Gateway Commercial Subdivision as Amended; thence along the boundaries of said Lot 3 the following five courses: North $6^{\circ}51'42''$ East 34.59 feet; North $82^{\circ}55'55''$ West 174.24 feet; North $6^{\circ}51'42''$ East 252.20 feet; North $83^{\circ}10'00''$ West 0.78 feet; and North $6^{\circ}50'00''$ East 109.11 feet; thence South $83^{\circ}10'00''$ East 400.05 feet along said Lot 3 and the Southerly Line of said Lot 4 to the point of beginning.

EXHIBIT "B"

Site Plan

