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CT- 100009 CAP

TIN- 22-25-170-023

12911182

12/28/2018 4:27:00 PM \$144.00

Book - 10742 Pg - 5499-5564

ADAM GARDINER

Recorder, Salt Lake County, UT

COTTONWOOD TITLE

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MASTER PARKING AGREEMENT

FOR

CANYON CENTRE CONDOMINIUMS PARKING STRUCTURE

December 24, 2018

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**MASTER PARKING AGREEMENT
FOR
CANYON CENTRE CONDOMINIUMS PARKING STRUCTURE**

THIS MASTER PARKING AGREEMENT FOR CANYON CENTRE CONDOMINIUMS PARKING STRUCTURE (this “**Agreement**”), is executed this 24th day of December 2018 by **CANYON CENTRE CAPITAL, LLC**, a Utah limited liability company.

RECITALS

A. Developer is the owner of a certain parcel of real property known as Lot 2 of the Canyon Centre Subdivision located in the city of Cottonwood Heights, Salt Lake County, Utah, more particularly described in “**Attachment 1**” attached hereto, upon which Developer intends to develop an integrated retail, commercial and hotel project. Unless the context clearly indicates otherwise, capitalized terms used in this Agreement without further definition and not otherwise defined herein are defined in Article I.

B. Developer, as declarant, has recorded the Condominium Declaration against the Condominium Property.

C. The Condominium Project will include an underground parking structure more particularly depicted on the Shared Parking Plan attached hereto as “**Attachment 2**”.

D. By this Agreement, Developer intends to establish the terms, procedures and plan for the operation of the Parking Structure as a single, integrated parking facility and to create the Committee to implement the terms and conditions set forth herein.

NOW, THEREFORE, Developer does hereby declare, as owner of all of the Units situated within the Condominium Property, and on behalf of all future owners of the Units, that this Agreement and the terms, covenants, restrictions, limitations, and conditions herein shall constitute covenants that run with the land and shall be binding on and be for the benefit of the Developer, its successors and assigns and all parties having or acquiring any right, title or interest in and to the Units and all or any portion of the Condominium Project, and the respective heirs, successors and assigns of such parties.

**ARTICLE I
DEFINITIONS**

When used in this Condominium Declaration (including the “**Recitals**” set forth above), the following terms shall have the meanings indicated below. Unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

“**Allocated Percentage**” shall mean the percentage of Parking Expenses and Capital Expenditures to be charged to the Hotel Unit and the Office Unit as set forth in Section 4.4.3 below and assessed to each of the Hotel Unit and the Office Unit.

“**Annual Assessments**” shall include Annual Parking Assessments and annual assessments for Capital Expenditures as set forth in Section 4.6.2 of this Agreement.

“Annual Parking Expenses” shall have the meaning set forth in Section 4.6.2 of this Agreement.

“Available Hours” shall mean the total number of parking space hours available within the Parking Structure during a defined period.

“Bank” has the meaning set forth in Section 4.6.5.

“Budget” shall have the meaning set forth in Section 4.1 of this Agreement.

“Canyon Centre Project” shall mean the Canyon Center mixed use project that is the subject of the Master Declaration.

“Capital Expenditures” means all capital expenditures for Capital Improvements to the Parking Structure which are permitted to be made by the Committee pursuant to or in compliance with this Agreement.

“Capital Improvements” shall have the meaning set forth in Section 4.3 of this Agreement. The term shall not include routine maintenance and replacement of the Parking Structure.

“Capital Reserve Account” shall have the meaning set forth in Section 4.5 of this Agreement.

“CHCDRA” shall mean and refer to the Cottonwood Heights Community Development and Renewal Agency.

“City” shall mean and refer to the city of Cottonwood Heights.

“Committee” shall mean and refer to the committee described in Article II of this Agreement.

“Condominium Association” shall refer to THE CANYON CENTRE CONDOMINIUM ASSOCIATION, the membership of which shall include each Owner of a Unit in the Condominium Project.

“Condominium Declaration” shall mean and refer to the Declaration of Condominium for Canyon Centre Condominiums recorded December 28, 2018 as Entry No. 12910498 in Book 10742 at Pages 1095 through 1131 of the official records of the Salt Lake County Recorder, as such declaration may hereafter be amended and supplemented.

“Condominium Plat” shall mean the record of survey map of the Condominium Property submitted with respect to the Condominium Project in the official records of the Salt Lake County and all amendments thereto.

“Condominium Project” shall mean and refer to the condominium project within Lot 2 of the Canyon Centre Project subject to the Master Declaration, together with all improvements to be located on the Condominium Property and the plan of development and ownership of the Condominium Property.

“Condominium Property” shall mean and refer to the entire tract of real property now or hereafter covered by the Condominium Plat. A description of the real property covered by the Condominium Plat on the effective date of the Condominium Declaration is set forth in Attachment 1.

“Consumer Price Index” shall have the meaning set forth in Section 3.2.1 of this Agreement.

“Consumptive Use” shall mean the total number of hours (with each partial hour being counted as a full hour) that vehicles operated by or associated with a guest, patron, tenant or user of a certain Unit occupies a parking space in the Parking Structure during the defined period of time divided by the Available Hours for that same time period.

“County” shall mean and refer to Salt Lake County.

“Developer” shall mean and refer to Canyon Centre Capital, LLC, a Utah limited liability company.

“Default Rate” shall mean that rate of interest which shall be determined in accordance with the provisions of Section 4.6.5 and which shall be required to be paid in accordance with the provisions of this Agreement.

“Development Agreement” shall mean the “Development Agreement” covering the Canyon Centre Project between Developer and the CHCDRA recorded on December 27, 2018 as Entry No. 12910132 in Book 10741 beginning at Page 8912 of the official records of the Salt Lake County Recorder.

“Environmental Laws” means the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Federal Water Pollution Control Act of 1977, 33 U.S.C. § 1251 et seq.; as amended by the Water Quality Act of 1987; FIFRA; the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. § 1401 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 1431 et seq.; the Noise Control Act of 1972, 42 U.S.C. § 4901 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; CERCLA, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001, and the Radon Gas and Indoor Air Quality Research Act of 1986, 42 U.S.C. § 7401; RCRA; TSCA; AEA; and NWPA, all as may be amended, with implementing regulations and guidelines. Environmental Laws shall also include all federal, state, regional, county, municipal and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws above or purport to regulate (now or in the future) Hazardous Material.

“Exclusive Public Stalls” shall mean 80 contiguous Public Stalls in the Parking Structure which are reserved for use by members of the general public who are then visiting Big Cottonwood Canyon or Little Cottonwood Canyon; provided that CHCDRA and County may modify the scope of permissible public use of the Exclusive Public Stalls beyond solely parking for canyon visitors by written resolutions enacted by both those public entities. In order to reduce congestion in Big Cottonwood Canyon and Little Cottonwood Canyon, the Exclusive Public Stalls shall not be available for use by owners, tenants, occupants, customers, guests or invitees of any Unit except to the extent, and for the duration, that such persons are then visiting those canyons. To that end, signage stating “CANYON PARKING ONLY. No Office/Hotel Parking,” or similar, shall be placed by each of the Exclusive Public Stalls to clarify that such stalls may not be used by employees, customers or other users of the Office Unit or the Hotel Unit. Such signage, and its placement, shall be subject to CHCDRA’s and County’s prior reasonable approval.

“GAAP” means generally accepted accounting principles at the time in question.

“Hazardous Material” means any hazardous substance, pollutant or contaminant regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. (“CERCLA”); oil and petroleum products and by-products and natural gas, natural gas liquids, liquified natural gas and synthetic gas usable for fuel, urea formaldehyde foam insulation and chlorofluorocarbons; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. (“FIFRA”); asbestos, polychlorinated biphenyl and other substances regulated under the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq. (“TSCA”); chemicals subject to the Occupational Safety and Health Standards, Hazard Communication, 29 C.F.R. § 1910.1200, as amended; source material, special nuclear by-product materials, and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq. (“AEA”); or the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. § 10101 et seq. (“NWPA”); industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq. (“RCRA”); and any other hazardous substance, pollutants or contaminant that is regulated or becomes regulated under any other Environmental Laws.

“Hotel Stalls” shall mean the stalls that shall be designated and reserved for use by the Hotel Unit in the Shared Parking Plan attached hereto as Attachment 2, which stalls are subject to the Condominium Declaration, and some of which are subject to the Public Easement and the Office Easement and the rights and obligations set forth therein.

“Hotel Unit” shall mean the Unit indicated as Unit 2A and 2A-2 (called **“Parking Level 2”**) on the Condominium Plat, which shall include the **“Hotel Podium”** above the Parking Structure on which the Hotel will be constructed, together with Parking Level 2 including approximately 145 Parking Stalls, some of which are subject to the Public Easement and/or the Office Easement as more particularly set forth in the Shared Parking Plan, and subject to the financial obligation for use and maintenance of the Hotel Stalls and other financial obligations set forth herein.

“Interest Rate” shall mean that rate of interest which shall be determined in accordance with the provisions of Section 4.6.5 and which shall be required to be paid in accordance with the provisions of this Agreement.

“Limited Common Area” means those areas depicted on the Condominium Plat as Limited Common Areas and will include the surface parking stalls and plazas related to a specific Unit.

“Manager” shall mean and refer to the person, firm, or company, if any, designated from time to time by the Committee to manage the Parking Structure pursuant to this Agreement.

“Master Declaration” shall mean that certain Master Declaration of Covenants, Conditions and Restrictions for Canyon Centre recorded 15 April 2015 as Entry No. 12033926 in Book 10316 at Page 3767, as amended by the First Amendment to Master Declaration recorded December 27, 2018 as Entry No. 12910164 in Book 10741 beginning at Page 9205 of the official records of the Salt Lake County Recorder, as such declaration may be further supplemented or amended.

“Member” shall mean and refer to each member of the Committee.

“Monthly Assessments” shall have the meaning set forth in Section 4.6.1 of this Agreement.

“Monthly Parking Expenses” shall have the meaning set forth in Section 4.6.1 of this Agreement.

“Office Easement” shall mean the easement granted by the Hotel Unit to the Office Unit to convey the right for the Office Unit to use Parking Level 2 as set forth in the Shared Parking Plan.

“Office Stalls” shall mean those Parking Stalls within the Office Unit, which stalls are subject to the Condominium Declaration, and some of which are subject to the Public Easement and the rights and obligations set forth therein, together with those Parking Stalls within the Hotel Unit that are subject to the Office Easement, which are designated and reserved for use by the Office Unit as set forth in the Shared Parking Plan attached hereto as Attachment 2.

“Office Unit” shall mean the Unit indicated as Unit 2B, 2B-1 (called **“Parking Level 1”**) and 2B-3 (called **“Parking Level 3”**) on the Condominium Plat, which shall include the **“Office Podium”** above the Parking Structure on which the Office Building will be constructed, together with Parking Levels 1 and 3, portions of which are subject to the Public Easement as more particularly set forth in the Shared Parking Plan, together with the right to use the Public Stalls on the same terms and conditions as other members of the public, and subject to the financial obligation for use and maintenance of the Office Stalls and other financial obligations set forth herein.

“Owner” shall mean the person or persons, including the Developer, owning in fee simple a Unit in the Condominium Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah.

“Park” shall mean the Park indicated on the Master Plan to be contained within Lot 1 of the Canyon Centre Subdivision Plat and to be improved as set forth in the Declaration.

“Parking Assessments” shall mean charges imposed or levied by the Committee against Owners for Monthly Parking Expenses and Annual Parking Expenses.

“Parking Expense Account” means the separate bank account opened by the Committee as the operating account for the Parking Structure, and which shall be used exclusively for operating expenses and as further permitted herein.

“Parking Expenses” shall mean and refer to those costs and expenses arising out of or connected with the maintenance, operation, repair and replacement of the Parking Structure.

“Parking Fees” shall have the meaning set forth in Section 3.2 of this Agreement.

“Parking Level” shall mean each of Parking Level P1, Parking Level P2 and Parking Level P3 as depicted on the Shared Parking Plan.

“Parking Level P1” shall mean the lowest level of the Parking Structure, as depicted on Attachment 2, and owned as part of the Office Unit, containing approximately 217 Parking Stalls and subject to the Public Easement, the form of which is attached hereto as **“Attachment 3”**. Parking Level P1 is also known as Parking Level 1.

“Parking Level P2” shall mean the middle level of the Parking Structure as depicted on Attachment 2, owned as part of the Hotel Unit, containing approximately 145 Parking Stalls, and subject to both the Office Easement and the Public Easement. Parking Level P2 is also known as Parking Level 2.

“Parking Level P3” shall mean the upper level of the Parking Structure as depicted on Attachment 2, owned as part of the Office Unit, and containing approximately 55 Parking Stalls. Parking Level P3 is also known as Parking Level 3.

“Parking Revenue” shall have the meaning set forth in Section 3.3 of this Agreement.

“Parking Stalls” means all of the parking stalls within the Parking Structure.

“Parking Structure” shall mean the Parking Structure to be constructed within the Condominium Project by Developer and to be operated, maintained and used as set forth herein. The Parking Structure will include the foundations, walls, decks, podiums (except to the extent included in a Unit), supporting columns and other load-bearing components, elevators, stairs, electrical stair systems, if any, restroom facilities, any utility system (including, without limitation, HVAC, electrical or plumbing systems), striping, fire sprinkler systems and any and all other aspects or components now or hereafter constructed or located within the Parking Structure.

“Permittee” means any customer, patron, employee, tenant, concessionaire or other business invitee of any Owner.

“Person” shall include any entity, as applicable.

“Podium” means the foundation of all of the Units which is also the ceiling of the parking structure below. The only physical part of the parking structure included in a Unit is the portion of the Podium, if any, that is the surface of the footprint of the applicable Unit.

“Public Easement” shall mean the Public Parking Easement Agreement recorded against the Canyon Centre Project, including Lot 2 and Units 2A-2, 2B-1 and 2B-3 of the Condominium Project, on December 28, 2018 as Entry No. 12910366 in Book 10742 at Pages 459 through 488 of the official records of the Salt Lake County Recorder, the form of which is attached hereto as **“Attachment 3”**, and the perpetual, irrevocable and exclusive easements benefitting the public thereunder. This Agreement, the Master Declaration and the Condominium Declaration are and forever shall be subject and subordinate to the Public Easement despite the fact that the Public Easement may be recorded in the office of the Recorder of Salt Lake County, Utah after, for example, the Master Declaration and the Condominium Declaration.

“Public Entity” shall mean the CHCDRA, the City, the County, or any other public entity or public agency which then owns or controls any part of the Public Easement, provided that such ownership or control of the Public Easement shall not cause, by implication or otherwise, Public Entity to be an “Owner” under this Agreement.

“Public Stalls” shall mean the 80 Exclusive Public Stalls together with the 137-202 (the specific number depending on the particular Public Use Time) non-Exclusive Public Stalls in the Parking Structure which are subject to the Public Easement, as more particularly described in the Development Agreement and the Public Easement and as shown on the Shared Parking Plan.

“Public Use” shall have the same meaning set forth in the Public Easement.

“Public Use Times” shall have the meaning set forth in the Public Easement.

“**Reserve Analysis**” shall mean an analysis to determine (a) the need for a reserve fund to accumulate funds to cover the cost of repairing, replacing, and restoring the Parking Structure that has a useful life of three years or more, but excluding any cost that can reasonably be funded from the Budget; and (b) the appropriate amount of any reserve fund.

“**Reference Rate**” shall have the meaning set forth in Section 4.6.5 of this Agreement.

“**Restaurant Unit**” shall mean the Unit indicated as Unit 2C on the Condominium Plat and will include the surface of the Restaurant Podium and the right to use the Public Stalls on the same terms and conditions as other members of the public, and subject to the financial obligations set forth herein.

“**Restaurant/Retail Units**” shall mean collectively the Restaurant Unit and the Retail Units on the Condominium Plat.

“**Retail Units**” shall mean the Units indicated as Unit 2D and 2E on the Condominium Plat and will include the surface of the applicable Retail Podium and the right to use the Public Stalls on the same terms and conditions as other members of the public, and subject to the financial obligations set forth herein.

“**Rules and Regulations**” shall mean standards for the occupancy and use of the Parking Structure and other matters related to the administration and management of the Parking Structure which may be adopted and amended from time to time by the Committee.

“**Shared Parking Plan**” shall mean the parking plan attached hereto as Attachment 2.

“**Tax Increment**” shall have the meaning set forth in the Development Agreement.

“**Total Stalls**” shall have the meaning set forth in Section 3.1.1 of this Agreement.

“**Unit**” shall mean and refer to any of the separately numbered and individually described Units now or hereafter shown on the Condominium Plat and including Units 2A, (together with 2A-2), 2B (together with 2B-1 and 2B-3), 2C, 2D and 2E.

ARTICLE II MANAGEMENT COMMITTEE

2.1 **Formation of Committee.** A five-member parking management committee has been organized by the Condominium Association to take all actions necessary or appropriate for the purpose of managing and operating the Parking Structure as provided in this Agreement (the “**Committee**”). The Committee is composed of a Member appointed by each of (a) the CHCDRA or successor Public Entity, (b) the Owner of the Hotel Unit, and (c) the Owner of the Office Unit, or the successor Owners of the Hotel Unit and the Office Units, together with two (2) additional Members to be selected by the foregoing three appointed Members. Membership in the Committee shall be conveyed automatically to the transferee of the Hotel and Office Units, and upon such transfer, the transferee shall be entitled to appoint a Member of the Committee, and the transferor’s prior appointee shall no longer be a Member.

2.2 **Purpose of Committee.** The Committee shall, through the Manager, cause the usage of stalls in the Parking Structure to be monitored and accounted for as directed by the Committee and as required by the Public Easement. All parking will be governed by Rules and Regulations established by the Committee.

2.3 **Governance of the Committee**

2.3.1 **Voting Rights of Members.** Each Member shall have one vote with respect to all matters to be approved by the Committee.

2.3.2 **Approval and Consents.** Unless otherwise specifically provided in this Agreement, any provision of this Article that requires the affirmative vote or written consent of the Members shall be deemed satisfied by the following:

(1) “Majority” means the affirmative vote of at least three (3) of the Members present, in person or by proxy, at a meeting duly called and noticed hereunder and at which at least four (4) Members are present;

(2) “Super Majority Vote” means the affirmative vote of at least four (4) of the Members present, in person or by proxy, at a meeting duly called and noticed hereunder and at which at least four (4) Members are present; and

(3) in lieu of the vote of a Member required under Sections 2.3.2 (1) and (2) above, Members may consent to the proposed action in a writing signed by a Majority or Super Majority, as the case may be.

2.4 **Specific Powers and Obligations of the Committee.** Except as otherwise provided in this Agreement, and without limiting the requirements for approval of the Members set forth in this Agreement, the Committee shall have the power:

2.4.1 and the obligation to employ the Manager as follows:

(1) The Committee, acting by a Super Majority Vote, shall employ the Manager under written contract to perform certain services on behalf of the Committee, including, without limitation, management, maintenance, repair and operation of the Parking Structure. The Committee may require appropriate fidelity bond coverage for the Manager and for any officer, employee and agent of the Manager who handles any funds hereunder.

(2) The Committee, acting by a Super Majority Vote, may by such written contract delegate in whole or in part to the Manager the duties, responsibilities, functions and powers of the Committee set forth in this Section 2.4. The services of the Manager shall be a Parking Expense; and

(3) The contract with the Manager shall provide that the Committee may terminate the contract of the Manager for cause immediately upon written notice, or for any reason or no reason upon thirty (30) days prior written notice;

2.4.2 but not the obligation to resolve all disputes concerning membership in the Committee, such resolution to be approved by a Super Majority Vote;

2.4.3 and the obligation to enforce the provisions of this Article;

2.4.4 but not the obligation, to borrow such funds as may be required in connection with the discharge by the Committee of its powers and duties under this Agreement at then-prevailing market rates and on commercially reasonable terms, all as approved by a Super Majority Vote;

2.4.5 and the obligation, to obtain either directly or indirectly obtain such insurance coverage as may be required by this Agreement or as the Committee otherwise deems reasonably necessary, including, without limitation, a policy insuring the members of the Committee against any liability for their errors and omissions arising from performance of their duties for the Committee, if available and at commercially reasonable rates;

2.4.6 and the obligation, to adopt, amend and repeal Rules and Regulations;

2.4.7 but not the obligation, to enter into contracts, leases and/or other written instruments or documents otherwise within the powers of the Committee, and to authorize the execution and delivery of any such instruments or documents by the appropriate representatives of the Committee;

2.4.8 and the obligation, to open the Parking Expense Account and any other bank account(s) on behalf of the Committee for the sole purpose of performing the duties of the Committee hereunder and to designate the signatures therefor;

2.4.9 but not the obligation, to bring, prosecute and settle litigation for itself, provided that it will make no settlement which results in a liability against the Committee in excess of Ten Thousand Dollars (\$10,000) without the prior approval of a Super Majority Vote and further provided that it will make no settlement resulting in any liability against a Member without that Members approval;

2.4.10 but not the obligation, to own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary or convenient to the management of the business and affairs of the Committee and in the operation of the Parking Structure, including, without limitation, fixtures, maintenance equipment and office supplies;

2.4.11 and the obligation, to keep adequate and proper books and records, including financial statements, required by this Agreement;

2.4.12 and the obligation, to do all other acts necessary for the operation of the Committee and the operation and maintenance of the Parking Structure.

2.5 **Matters Requiring Majority Approval.** A Majority shall be required to approve or consent to any matter not explicitly requiring the approval of a Super Majority under this Agreement, including, without limitation, the following matters:

2.5.1 adoption of a Budget, but only if the budgeted expenditures pursuant to such Budget are, in the aggregate, less than one hundred twenty percent (120%) of the budgeted expenditures under the Budget for the prior year;

2.5.2 adoption of the Rules and Regulations;

2.5.3 adoption of an amendment to this Agreement;

2.5.4 approval of any item of expense not included in the Budget which is in excess of Ten Thousand Dollars (\$10,000) in 2017 and thereafter Adjusted Annually by the Cost of Living Index; and

2.5.5 establishing Assessments to Owners for Capital Expenditures in addition to the Capital Reserve Account.

2.6 **Matters Requiring Super Majority Approval.** Notwithstanding any other provisions of this Agreement to the contrary, a Super Majority shall be required to approve or consent to any matters which, by the terms of this Agreement, explicitly require a Super Majority Vote including, without limitation, the following matters:

2.6.1 the Budget, but only if the budgeted expenditures pursuant to such Budget are, in the aggregate, equal to or greater than one hundred twenty percent (120%) of the budgeted expenditures under the Budget for the prior year;

2.6.2 a revised Assessment pursuant to Article IV below;

2.6.3 selection of the Manager and approval of the terms of the contract for the Manager;

2.6.4 selection of an expert for annual inspection of the Parking Structure;

2.6.5 modification of the system for the distribution of parking passes, collection of Parking Revenue, expenditures including the determination of the number of validations to be issued in respect of a stall and the process for allocation and distribution of validations; and

2.6.6 a Capital Improvement with a cost exceeding Fifty Thousand Dollars (\$50,000.00).

2.7 **Matters Affecting Only One Parking Level.** Notwithstanding anything in Section 2.6 or elsewhere in this Agreement to the contrary, action may be taken by an Owner of a Parking Level, without any vote or approval of any other Owner; provided that (a) such action is necessary or desirable, in the sole discretion of such Owner in connection with such Owners obligation to provide parking to its tenants or users, and (b) such action does not materially and adversely affect any lease or easement holder of the subject stalls or impair the ownership, use, enjoyment or operation of any other Parking Level or the Parking Structure generally; and further provided that such action does not reduce the access to or number of Parking Stalls on such Parking Level.

2.8 **Arbitration of Committee Decisions.** If the Members cannot agree on any matter which requires the approval of a Super Majority Vote, a Majority may elect to submit such dispute to Arbitration; provided, disputes relating to a determination to amend this Agreement shall not be submitted to arbitration. In the event a dispute arises as to a matter requiring Super Majority Vote which involves the payment of an Assessment for work previously performed and billed to the Committee or relates to an emergency expenditure approval by a Majority, each Owner shall pay such Assessment pending the resolution of the dispute by Arbitration. If it is determined as a result of such dispute resolution that an Owner was not required to pay the Assessment(s) it paid, the Committee shall permit such Owner to offset future Assessments by the amounts the Owner paid pending the dispute resolution, together with a reasonable interest rate, with the result that such Owner is permitted to recover its actual cost for paying

an Assessment(s) pending the dispute resolution. Alternatively, the Members may submit the question of appropriate reimbursement procedures to Arbitration.

If an Owner disputes a determination made pursuant to this Article II that special requirements of such Owners use of its Parking Level pursuant to an easement or lease, results in an expenditure being appreciably higher than it otherwise would be in connection with an office building or a hotel, as the case may be and thus result in a higher Assessment to such Owner, such Owner may elect to submit such dispute to Arbitration.

2.9 **Audit.** Annually, or at the request of any Owner, the Committee shall cause an audit to be conducted to determine Consumptive Use of the Parking Stalls. The Committee shall also cause an audit of its books and records to be conducted periodically, but not more frequently than annually, and certified by a certified public accounting firm and delivered to the Owners. In addition, at its sole cost, any Owner shall have the right, of ten (10) days prior written notice to the Committee, to audit the Committees books and records during normal business hours. The Owner requesting an audit shall reimburse the Committee for any reasonable costs the Committee may incur in cooperating with such audit unless such audit is conducted by auditors reasonably acceptable to the Committee and such audit discloses that such Owners proper Assessment for the accounting period involved should have been at least five percent (5%) less than the Assessment the Committee actually levied to such Owner, or such Owners proper revenue share with respect to the Parking Structure should have been at least five percent (5%) greater than the share actually paid to such Owner, in which case the Committee shall reimburse the auditing Owner for its reasonable costs in conducting the audit. Notwithstanding anything to the contrary in this Agreement, the financial records of the Committee for a Fiscal Year shall be deemed correct and may not be challenged by an Owner after the last day of the third Fiscal Year following such Fiscal Year.

ARTICLE III

USAGE OF PARKING STRUCTURE, IMPOSITION AND COLLECTION OF PARKING FEES

3.1 **Designation of Parking Stall Use.**

3.1.1 The Parking Structure shall contain three levels and an anticipated total of no fewer than 415 parking stalls (the “**Total Stalls**”). Each Parking Level will be owned by one of the Owners. The Owner of the Hotel Unit will own Parking Level 2 with approximately 145 Parking Stalls and the Owner of the Office Unit will own Parking Level 1 and Parking Level 3 with approximately 217 and 55 Parking Stalls, respectively. The use of all Parking Stalls will be monitored at the gates of the Parking Structure as vehicles exit the Parking Structure. The Developer will erect access gates, ticketing/payment booths or kiosks, or other similar improvements in the Parking Structure to aid in controlling access to and use of the Parking Structure as provided herein and in the Condominium Declaration. Use of the Parking Stalls will be signed and allocated as set forth at the times and in the locations depicted in the Shared Parking Plan and as follows:

(1) 80 of the Parking Stalls shall be the Exclusive Public Stalls, designated (and so-marked) for exclusive use by the general public 24 hours per day, 365 days per year as provided above, and 137-202 (the specific number depends on the particular Public Use Time) of the other Parking Stalls shall be non-Exclusive Public Stalls designated for use by the general public during the Public Use Times as set forth in the Public Easement and the Shared Parking Plan (together, the “**Public Stalls**”). The location and grouping of the Public Stalls is also depicted in the Shared Parking Plan. Use of the 80 Exclusive Public Stalls is limited as provided above, and use of the 137-202 non-Exclusive Public Stalls during the Public Use Times is limited to Public Use.

(2) Notwithstanding anything in this Agreement to the contrary, the number of Exclusive Public Stalls may not be reduced to less than 80 and the number of non-Exclusive Public Stalls may not be reduced to less than 137-202 (the specific number depending on the particular Public Use Time). Otherwise, the numbers of available Parking Stalls set forth in this Agreement may be modified as a result of design, site, or other plan changes during the course of construction or use. In the event of a modification, the actual number of stalls shall be substituted in all calculations to be made under this Agreement. The basis for the foregoing parking stall use allocation is the Shared Parking Plan.

(3) The Parking Stalls in the Parking Structure other than the Public Stalls during Public Use Times shall be available for use by tenants, employees, and users of the Hotel Unit, the Office Unit and the Restaurant/Retail Units at the times and in the locations set forth in the Shared Parking Plan. The Owner of the Hotel Unit shall grant the Office Easement to the Office Unit with respect to the Parking Stalls shown in the Shared Parking Plan.

3.1.2 The Parking Stalls are subject to the Public Easement and the Office Easement, provided that the Office Easement shall be subordinate to the Public Easement. Pursuant to Section 57-8-6, Utah Code Annotated, the Owner from time to time of the Office Unit and the Hotel Unit are entitled to exclusive ownership and possession of such Units but may, under Section 57-8-4, Utah Code Annotated, and other applicable law, grant leases, easements and other rights therein to third parties for such consideration as such owner deems appropriate. Consequently, for valuable consideration, Developer, as owner of the Hotel Unit and the Office Unit and on behalf of all future owners of such Units has granted (1) the Public Easement for the benefit of the public and hereby further grants and conveys an easement for the ingress and egress of pedestrian and vehicular traffic in connection with use of the Public Stalls and (2) the Office Easement for the benefit of the Office Unit and hereby further grants and conveys an easement for the ingress and egress of pedestrian and vehicular traffic in connection with use of the Office Stalls.

3.1.3 The Public Stalls shall not be available for use by owners, tenants, occupants, customers, guests or invitees of any other Unit except in their capacity as members of the general public and when they are using the Public Stalls for a Public Use, and the Committee will take such steps as may be reasonably available to prevent and/or to penalize unauthorized use of the Public Stalls. Further, the Public Entity may utilize certain enforcement methods to better assure that the Public Stalls are only subject to Public Use during the Public Use Times as explained in the Public Easement and the Development Agreement, and the Committee may utilize certain enforcement methods to better assure the authorized use of the Parking Structure during the times and in the locations set forth in the Shared Parking Plan. The 80 Exclusive Public Stalls, and the 137-202 non-Exclusive Public Stalls during the Public Use Times, shall not be considered to be available to meet the parking needs of any Unit(s) of the Condominium Project, or of any other portions of the Canyon Centre Project, when analyzing the availability of adequate parking to meet City's requirements in connection with any land use application concerning such other Unit(s).

3.2 **Parking Fees.** An hourly or daily parking fee will be charged ("**Parking Fees**") for the use of all Parking Stalls in the Parking Structure.

3.2.1 The fees for public parking in the Parking Structure shall be set from time to time by the Committee or the Condominium Association in a manner that promotes, rather than discourages, public parking in the Parking Structure and in an amount that results in income from the Public Stalls in an amount sufficient to pay 20% of Parking Assessments; provided, however, that the fees charged for public use of any Public Stall may not at any time exceed the lesser of (1) the average fee for public parking in three comparable parking structures outside the central business district (i.e., 400 West to 200

East, inclusive, between North Temple and 600 South, inclusive) of downtown Salt Lake City, as reasonably designated by CHCDRA, or (2) 75% of the average fee for public parking in three comparable parking structures within the central business district of downtown Salt Lake City, as reasonably designated by CHCDRA, or (3) \$1.50 per hour, adjusted for any changes in the Consumer Price Index between the date of this Agreement and the date of the proposed adjustment to such public parking fees. As used herein, “**Consumer Price Index**” shall mean the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics, U.S. City Average, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982-84=100). Should the Bureau of Labor Statistics discontinue the publication of said index, or publish the same less frequently, or alter the same in some other manner, then the CHCDRA shall use as a reference a substitute index or substitute procedure which reasonably reflects and monitors consumer prices. Further, if the base year “(1982-84=100)” or other base year used in computing the Consumer Price Index is changed, the figures used in making the rental adjustments required herein shall be changed accordingly so that all increases in the Consumer Price Index are taken into account notwithstanding any such change in the base year. The designation of “comparable parking structures” pursuant to (1) and (2) above will be subject to prior notice to and input from the Committee or the Condominium Association.

3.2.2 The Committee may issue parking validations at the same cost as Parking Fees or as otherwise determined by the Committee. Such validations may be issued to the general public or the tenants, guests and invitees of any Unit.

3.2.3 In consideration for payment of their Allocated Percentages, the Owner of the Hotel Unit is entitled to a credit against either Parking Fees or Capital Expenditures for 24% of the Available Hours and the Owner of the Office Unit is entitled to a credit against either Parking Fees or Capital Expenditures for 56% of the Available Hours.

3.3 **Parking Revenue.** Parking Fees, including revenue from the sale of parking validations, from all Parking Stalls constitute (“**Parking Revenue**”). The Hotel and Office Owners share of Parking Revenue is the amount of Parking Revenue derived from rental of the Hotel Stalls and Office Stalls, as applicable, and is determined in accordance with the provisions of this Section 3.3. Parking Revenue from the Public Stalls is the amount of Parking Revenue derived from rental of the Public Stalls, also as determined in accordance with the provisions of this Section 3.3.

3.3.1 Parking control equipment, including gates, passes and validations, will be provided through a third party provider that will electronically track all vehicles entering into and exiting the various Parking Levels. Signage will also be used within the Parking Structure to designate parking rights and time frames. Parking Fees shall be determined pursuant to procedures determined by the Committee, acting by Super Majority Vote. The Committee shall establish such accounting and collection procedures as are reasonably required to allocate Parking Fees from each vehicle on an accurate, fair and equitable basis for such periods. In the event any Member objects to the procedures established by the Committee, such procedures shall be finally established by arbitration pursuant to Section 2.8.

3.3.2 All Parking Revenue shall be deposited into the Parking Expense Account. An Owner’s share of Parking Revenue shall be based upon revenue arising from vehicles using such Owners stalls as an owner, guest, tenant or other user or pursuant to a lease, lease or easement agreement.

3.3.3 At the end of each calendar year, the Committee shall first offset the credits set forth in Section 3.2.3 above against the Parking Expenses owed by the Hotel Unit and the Office Unit, collect all outstanding Parking Revenue, and then distribute all Parking Revenue received for the accounts of the Hotel Unit Owner and the Office Unit Owner to such Owner. No Parking Revenue derived from

the Public Stalls will be disbursed to CHCDRA or any successor Public Entity, and any balance in the Parking Expense Account that was derived from the Public Stalls shall then be transferred into the Capital Reserve Account.

**ARTICLE IV
BUDGET, PARKING EXPENSES, CAPITAL EXPENDITURES, CAPITAL RESERVES AND
ASSESSMENTS**

4.1 **Budget.** Parking Expenses and Capital Expenditures shall be determined on the basis of a calendar year beginning January 1 and ending December 31 next following; provided, however, that the first such year shall begin on the date that the Condominium Declaration is recorded and shall end December 31 of the following year. On or before September 1st of each year, the Manager shall prepare and furnish to the Committee or cause to be prepared and furnished to the Committee an operating budget for the upcoming calendar year (the “**Budget**”). The Budget shall itemize for the applicable year the estimated Parking Expenses, and anticipated Capital Expenditures, anticipated revenue, if any, any estimated deficits or surpluses from the prior year, and any other detail as determined by the Committee. The Budget will include the initial amount for Monthly Assessments, and Annual Assessments including the amounts to be deposited into the Capital Reserve Account by each Owner. On or before October 1 of each year, the Committee shall provide the Budget to each Owner and also provide a copy to the Condominium Association for information purposes only. The Budget shall serve as notice of and as the supporting document for the Assessments for the upcoming calendar year and as a guideline under which the Parking Structure shall be operated during such year.

4.2 **Parking Expenses.** Parking Expenses include all actual monthly and annual amounts expended for management and operation of the Parking Structure and associated accounting, maintenance, cleaning and janitorial services related to the Parking Structure, liability, property, errors and omissions insurance in connection with the Committee and such other insurance described in Section 5.6, security personnel and maintenance and repair of security systems, utilities; and any audit performed by the Committee if requested by an Owner, but not more frequently than once per year (which is separate from determination of Consumptive Use).

Notwithstanding the foregoing, in the event that a Parking Expense is appreciably higher than it otherwise would be required in connection with a typical parking facility operated in connection with a typical office building (without additional security or other special requirements), due to the special requirements of an Owner or that Owners special use of the Parking Structure, then the amount of such expenditure that is attributable to such nature or requirements shall be paid solely by such Owner. By way of example, but not in limitation of the foregoing, the incremental expenditures for security personnel and systems which are attributable to the particular nature and requirements of the Owner of a Unit shall be borne solely by such Unit. The determination of whether an expenditure should be specially allocated shall be made by a Super Majority Vote.

4.3 **Capital Expenditures for Parking Structure.** Capital Expenditures include all actual amounts expended for Capital Improvements. “**Capital Improvements**” means all improvements and replacements to the Parking Structure classified as capital in nature by GAAP and all of the following, however classified under GAAP: (a) major repairs to and replacement of vehicular access drives, underground stairwells up to the surface, card reader systems, ticket spitters, control gates, directional signage within the Parking Structure, security systems, and other areas and systems operated for the benefit of the entire Parking Structure; (b) an annual inspection of the Parking Structure by an expert who shall be hired by the Committee, pursuant to the selection of such expert by a Super Majority Vote, to inspect and analyze the Parking Structure and make recommendations with respect to the structure and

any repairs and capital improvements and, if approved by a Super Majority Vote, the implementation of such recommendations; and (c) painting, waterproofing, resealing and equipment replacement with respect to the Parking Structure.

Notwithstanding anything in Section 4.2 to the contrary, Capital Expenditures will not be included within Parking Expenses. Further, and notwithstanding the previous provisions of this Section 4.3, in the event that any Capital Expenditure occurs only because of, or is appreciably higher than otherwise would be required in connection with a parking facility operated in connection with an office building, due to the requirements of an Owner or that Owners specialized use of the Parking Stalls or other parts of the Parking Structure benefitting such Unit, then the amount of such Capital Expenditure that is attributable to such special requirements shall be paid solely by such Owner. By way of example, but not limitation, any Capital Expenditure for security systems which is attributable to the special requirements of the Owner of a specific Unit shall be borne solely by the Owner of such Unit. The determination of whether a Capital Expenditure should be specially allocated shall be determined by a Super Majority Vote.

4.4 **Sources for and Payment of Parking Expenses and Capital Expenditures.**

4.4.1. **Revenue from Public Stalls and Tax Increment.** It is intended that as consideration for the ongoing operation and maintenance of the Parking Structure, all Parking Fees obtained from rental of the Public Stalls during Public Use Times shall initially be deposited into the Parking Expense Account for use in operation and maintenance of the Parking Structure as set forth herein, and that such revenue, together with certain Tax Increment available as provided in the Development Agreement, will account for up to approximately 20% of the Parking Expenses and Capital Expenditures on a monthly and annual basis. The balance of the Parking Expenses and the Capital Expenditures not derived from Parking Revenue generated from the Public Stalls or available Tax Increment will be paid by the Owners with no contribution from Public Entity.

(1) Parking Revenue paid by users of the Public Stalls will be applied to payment of Monthly Parking Expenses, with any amount over 20% of such expenses remaining in the Parking Expense Account to be further governed by this Agreement; provided, however, that in no event will any portion of such revenue be returned or credited to any Public Entity.

(2) Tax Increment received by the Condominium Association will be deposited into the Parking Expense Account or the Capital Reserve Account as reasonably determined by the Committee.

4.4.2 **Revenue from Restaurant/Retail Unit Users for Monthly Parking Expenses.** Parking Revenue paid by users of the Restaurant/Retail Units will be applied to payment of Monthly Parking Expenses.

4.4.3 **Revenue from and Payment of Allocated Percentage for Monthly Parking Expenses.** The balance of the Monthly Parking Expenses after payment of up to 20% from Parking Revenue related to the Public Stalls will be paid 30% by the Owner of the Hotel Unit and 70% by the Owner of the Office Unit (the "Allocated Percentage").

4.4.4 **Annual Parking Expenses.** At the end of each calendar year, all amounts remaining in the Parking Expense Account, other than revenue from Public Stalls which the Committee desires to transfer to the Capital Reserve Account, will be applied first to Annual Parking Expenses. Any then unpaid Annual Parking Expenses will be paid by the Owners of the Hotel Unit and the Office Unit pursuant to the Allocated Percentage.

4.4.5 **Capital Expenditures.** Also at the end of each calendar year, any shortfall in the Capital Reserve Account (without depleting any funds earmarked or reserved for specific future Capital Improvements or the Reserve Fund) to pay unpaid Capital Expenditures will be billed to the Owners of the Hotel Unit and the Office Unit in the Allocated Percentages after deduction of all amounts of Tax Increment in the Capital Reserve Account.

4.5 **Capital Reserve Analysis and Capital Reserve Account.** The Committee shall cause a Reserve Analysis to be conducted no less frequently than every five (5) years. The Committee shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every two (2) years. The Reserve Analysis and updates shall project a minimum of 30 years into the future. The Committee shall maintain a reserve fund based on the Reserve Analysis (the “**Capital Reserve Account**”) for the maintenance, repair, and replacement of the Parking Structure as determined by the Owners annually and which will be included in the Budget. All such funds shall be segregated from other operating accounts to the extent required by Utah law, and to the extent such funds are not expended, they shall be retained as additional reserves. The Reserve Analysis report shall be prepared by a person or persons with (a) experience in current building technologies, (b) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (c) the tools and knowledge to prepare a report. Preferably, but subject to the discretion of the Committee in determining that the qualifications have otherwise been met by one person, two people shall prepare the Reserve Analysis, an architectural consultant who will perform a property condition assessment and a reserve study professional who will utilize the property condition assessment and prepare the Reserve Analysis. The Reserve Analysis shall be presented at the annual meeting or special meeting of the Owners, and the Owners shall be given an opportunity to discuss reserves and to vote on the funding of the Capital Reserve Account. The minutes of the Condominium Association shall reflect such decisions.

4.6 **Agreement to Pay Assessments.** Each Owner of any Unit, including the Restaurant/Retail Units, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other Owner and the Condominium Association to pay its Assessments hereunder for the purposes provided in this Agreement. Such assessments shall be fixed, established, and collected from time to time as provided in this Section 4.6.

4.6.1 **Monthly Assessments.** Monthly assessment of Parking Expenses (“**Monthly Parking Expenses**”) shall be levied by the Committee to obtain the funds to operate and maintain the Parking Structure based on Consumptive Use. Consumptive Use shall be determined by SkiData. All Monthly Assessments shall be assessed to each Unit monthly based initially on the Budget and thereafter based on Consumptive Use for the prior month (“**Monthly Assessments**”), and are due and payable on the 1st day of the following calendar month, and will be deposited directly into the Parking Expense Account. Any Owner may direct the Committee to offset Parking Revenue credited to such Unit against the Monthly Assessment for such Unit at any time. Subject to the limitations of this Article, if the Committee determines, in its sole discretion and for any reason that the current Monthly Assessments are, or shall become, insufficient to meet the Parking Expenses, the Members shall revise the Budget and, upon approval of a Super Majority Vote, levy revised Monthly Assessments.

4.6.2 **Annual Assessments.** Annual Assessments shall be computed and assessed against all Units in the Condominium Project and shall include each Owners Allocated Percentage of Annual Parking Expenses and Capital Expenditures. The Capital Expenditures shall be based on the Budget and allocated both in accordance with the Allocated Percentages and considering the portion of Capital Improvements benefitting all of the Owners and parts of the Parking Structure other than the

Parking Stalls. All Annual Assessments are due and payable January 1 of each year and will be deposited directly into the Parking Expense Account and Capital Reserve Account as applicable. Subject to the limitations of this Article, if the Committee determines, in its sole discretion and for any reason that the current Annual Assessments are, or shall become, insufficient to meet the total expenses, the Members shall revise the Budget and, upon approval of a Super Majority Vote, levy revised Annual Assessments. In the event actual Parking Expenses for the calendar year exceed the amount of Monthly Parking Expenses assessed by the Committee hereunder, the shortfall shall be an “**Annual Parking Expense**” to be collected hereunder as an Annual Parking Expense. In the event assessed Parking Expenses for the calendar year exceed actual Parking Expenses for such year, the excess will be deposited into the Parking Expense Account.

4.6.3 **Collection of Assessments.** Assessments shall be levied by the Committee to obtain the funds to operate and maintain the Parking Structure and to make Capital Improvements to the Parking Structure. At the end of each calendar year, the Committee shall determine the exact amount of the Parking Expenses which have been incurred during that year, and shall charge or credit each Owner in the next assessment period for the difference between the actual Parking Expenses incurred for the prior assessment period and the estimated expenses upon which the prior Parking Assessment was paid by such Owner. Within ninety (90) days of the close of each calendar year, each Owner shall be provided a copy of the operating statement of the Parking Structure for the preceding year. Such operating statement shall provide reasonable detail of the actual income and expenses of the Committee for the applicable year. Failure of the Committee to give timely notice of any Annual Assessment or failure to deliver the Budget as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Agreement or a release of any Owner from the obligation to pay such Assessment (or any other Assessment); provided, however, the date on which payment shall become due in such case shall be deferred to a date thirty (30) days after written notice of such Annual Assessment shall have been given to such Owner. The Committee shall in its sole discretion, be entitled to establish or modify such procedures for the collection of Assessments, including provisions for filing a lien against the Unit in the overdue amount as set forth in this Section below, late charges, interest on unpaid Assessments, and such other matters as the Committee shall determine, and shall have any and all rights and remedies provided at law or in equity for the collection of debts, subject only to the requirement of notice and hearing provided herein. Upon collection, all Parking Expenses shall be deposited into the Parking Expense Account and Capital Expenditure funds collected shall be deposited into the Capital Expense Account.

(1) **Notice of Unpaid Assessment.** If any Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Committee may mail a notice of default to the applicable Owner. Such notice shall specify (a) that the applicable Assessment or installment thereof is late, (b) the action required to cure such default, including the specific amount required to be paid, including late charges, interest and costs of collection, if any, (c) a date not less than thirty (30) days from the date the notice is mailed by which such default must be cured, and (d) that a failure to cure the default on or before the date specified in the notice may result in the acceleration of the balance of the Assessment for the current year and the filing and foreclosure of a lien for the Assessment. If the default in the payment of the Assessment is not cured as specified in the notice, the Committee, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further notice or demand to the Owner and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Agreement.

(2) **Remedies to Enforce Assessments.** Each Assessment levied, together with accrued interest, late charges or other similar charges, shall be a separate, distinct debt and obligation of the Owner against whom such Assessment is assessed. Suit to recover a money judgment for such obligation shall be maintainable by the Condominium Association against such Owner without

foreclosing or waiving the lien securing the same. Any and all rights and remedies shall be exercised in such manner, on one or more occasions and in such order as the Committee shall elect, without waiver of any other right or remedy or lien provided in this Agreement or by law. Any failure of the Committee to exercise any such right on one or more occasions shall not constitute a waiver of the right to so exercise such right in the future. In addition to the amount of the unpaid Assessment, an Owner shall be required to pay any and all costs and expenses which may be incurred by the Committee in collection of such Assessment, including reasonable attorneys fees and costs, whether or not litigation is commenced.

(3) **Lien for Assessments.** The Committee may record a lien against the Unit owned by a delinquent Owner and may collect the unpaid Assessment, together with interest thereon at the Default Rate, late charges and costs of collection by lawsuit, by trustee's sale under power of sale (such power being hereby granted to Committee as trustee), by judicial foreclosure or by any other method allowed by law. Each such Assessment shall also constitute the personal obligation of the Owner affected at the time that the Assessment becomes due; and shall pass to the successors and assigns of an Owner. Notwithstanding anything contained in this Agreement to the contrary, no lien shall be created against or shall attach to any property right or interest owned by the Public Entity, but the Committee shall retain all other rights and remedies against such Owners as are permitted in this Agreement. An Owners acceptance of interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to Scott R. Sabey, Attorney at Law, as the designated trustee. The Condominium Association may appoint another qualified trustee by executing a substitution of trustee form.

In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys fees, and such costs and expenses shall be secured by the lien herein provided whether or not the same shall be specifically set forth therein. The Owner shall also be required to pay to the Condominium Association any Assessments against the Unit which shall become due during the period of foreclosure or sale, and all such Assessments shall be secured by the lien herein provided. The Condominium Association shall have the right and power to bid in any foreclosure or sale and, upon purchase thereof, to hold, lease, mortgage or convey the subject Unit. In the event a proceeding for the foreclosure of the lien granted hereby shall be commenced, while such proceeding shall be in process, the Condominium Association shall be entitled to the appointment of a receiver to collect the parking revenues being derived from said Unit.

(4) **Priority of Lien; Liability of Owner.** The lien for Assessments provided for herein shall have priority over any Mortgage recorded after a notice of assessment lien recorded by the Condominium Association. No foreclosure of a lien shall extinguish the personal liability of the Owner therefor unless the Condominium Association actually receives payment in full of amounts due. An Owners personal liability for payment of Assessments shall be reduced by the amount actually paid at the foreclosure by the successful bidder that shall remain after allocation for payment of costs and expenses incurred by reason of such sale. No other sale or transfer shall relieve such Owner from liability for any Assessments which shall be due as of the date of foreclosure.

4.6.4 **Certificate of Assessment.** The Committee shall, upon written request, and for a reasonable charge, furnish a certificate signed by an officer of the Condominium Association, setting forth whether the Assessments on a specific Unit have been paid and said certificate may be conclusively relied upon by the party requesting same.

4.6.5 **Accrual of Interest.** Interest shall accrue on amounts required to be paid in accordance with the provisions of this Agreement from the date such payment is due until the required amount is received by the Committee. The term "**Interest Rate**" when used in this Agreement shall refer to a per annum rate of interest which shall be two percent (2.0%) per annum above the Reference Rate.

The term “**Default Rate**” when used in this Agreement shall refer to a per annum rate of interest which shall be six percent (6.0%) per annum above the Reference Rate. The Interest Rate and the Default Rate shall be adjusted at the same time and in the same manner as there shall occur any change in the Reference Rate. The Reference Rate is the rate of interest established and made public from time to time by Zions First National Bank, NA (the “**Bank**”) and its successors and assigns, and used by the Bank as its reference point for pricing loans to substantial commercial borrowers, whether such rate shall be denominated as its reference rate, prime rate or other similar or dissimilar term (the “**Reference Rate**”). The Reference Rate shall be deemed also to refer to any subsequent reference point, however denominated, that may in the future be adopted by the Bank as the replacement for the Reference Rate which is currently being used by the Bank as its reference point. All calculations of interest hereunder shall be made as follows: (a) the Interest Rate or the Default Rate, as applicable, shall be multiplied by the amount due, (b) the product determined in clause (a) above shall be divided by three hundred sixty-five (365); and (c) the quotient obtained in clause (b) above shall be multiplied by the actual number of days in the period for which the calculation is being made.

4.6.6 **No Offset.** All Assessments shall be payable in the amounts specified in the levy thereof, and except for the offset permitted hereunder pursuant to Section 4.6.1, no offset or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Condominium Association, the Committee, the Manager or any employee, agent or representative thereof is not properly exercising its duties and powers under this Agreement.

4.6.7 **Inadequate Funds.** In the event that the Parking Expense Account or the Capital Reserve Account prove inadequate at any time for whatever reason, including nonpayment of any Monthly Assessment or Annual Assessment, the Committee may, on behalf of the Condominium Association, levy additional assessments in accordance with the procedure set forth in this Article IV, except that the vote therein specified shall be unnecessary.

ARTICLE V PARKING STRUCTURE MAINTENANCE, REPAIR, INSURANCE AND SECURITY

5.1 **Maintenance Obligation and Payment.** The Condominium Association has agreed to perpetually operate, maintain, repair and replace of all aspects and components of the Parking Structure at the expense of the Owners, and to fund Capital Improvements to the Parking Structure at the expense of the Owners, all as set forth in Article IV including Section 4.4 and 4.6 herein. The cost of reasonable repair and maintenance of the portion of the Podium that provides the foundation for each Unit and which portion is included in such Unit shall not be an obligation of the Condominium Association but may be included in the Capital Expense Assessment levied by the Committee.

5.2 **Committee’s Maintenance and Repair Duties.** The Committee, acting by and through the Manager, shall repair and maintain all of the Parking Structure in a first-class condition in a manner consistent with the standards of first-class parking projects which are used in connection with office facilities and/or hotels (whichever standard is higher) in the Salt Lake County area. Without limiting the foregoing, the Committee shall:

5.2.1 Maintain the asphalt, concrete and brick paved surfaces of the Parking Structure in a smooth and evenly covered condition with the type of surfacing material originally installed thereon, or such substitute material as shall be in all respects equal thereto in quality, appearance and durability;

5.2.2 Remove all paper, debris, filth and refuse from the Parking Structure and wash or thoroughly sweep paved areas as required;

- 5.2.3 Remove ice and standing water from the Parking Structure.
- 5.2.4 Replace and maintain parking entrance, exit and directional facilities and signs, markers and lights and light poles in the Parking Structure as shall be reasonably required to insure that the Parking Structure is adequately lighted and uniformly marked to facilitate convenient vehicular and pedestrian ingress and egress;
- 5.2.5 Clean, repair, replace and re-lamp lighting fixtures within the Parking Structure;
- 5.2.6 Repaint striping, markers and directional signs as necessary to maintain the Parking Structure in first class condition;
- 5.2.7 Employ courteous personnel for maintaining and operating the Parking Structure and, if necessary, to patrol all or a portion of the Parking Structure as is deemed necessary;
- 5.2.8 Maintain and keep in good operating and sanitary condition the ramps, stairways and elevators serving the Parking Structure;
- 5.2.9 Clean, repair and maintain all utility lines and facilities that serve the Parking Structure to the extent that the same are not cleaned, repaired and maintained by the applicable utility provider;
- 5.2.10 Maintain common storm drains in a free-flowing condition;
- 5.2.11 Repair damage to columns in the Parking Structure caused by vehicles using the Parking Structure;
- 5.2.12 Paint the Parking Structure, as needed, to preserve a first-class and well-maintained condition;
- 5.2.13 Operate toll and ticket booths at entrances and exits to the Parking Structure;
- 5.2.14 Maintain all toll and control gate equipment in an attractive and properly operating condition;
- 5.2.15 Establish and oversee the operation, repair and maintenance of a comprehensive security system serving the Parking Structure, as more fully provided in Section 5.6;
- 5.2.16 Make payment for all utility charges and other operating expenses related to the Parking Structure;
- 5.2.17 Enforce all Rules and Regulations;
- 5.2.18 Account for and make payment to each Owner of its respective share of net revenue; and
- 5.2.19 Repair, maintain and make Capital Improvements to the Parking Common Area with monies derived from the Capital Reserve Account.

The foregoing enumeration of the Committees duties shall not limit or affect the right of the Members set forth elsewhere in this Agreement to approve specific actions by consent of a Majority or Super Majority Vote, as the case may be, of the Members.

5.3 **Other Duties Related to Maintenance and Repair.** To the extent feasible, all maintenance and repair of the Parking Structure shall be performed by the Manager at hours which will cause minimal interference with the normal daily use of the Parking Structure. The Parking Structure shall be repaired and replaced with materials, apparatus and facilities of a quality at least equal to the quality of the item being repaired or replaced. The Parking Structure shall be inspected on a regular basis in order to detect needed repairs or malfunctioning within a reasonable period of time. Owners shall use their best efforts (a) to notify the Manager of any needed repairs or maintenance in the Parking Structure, and (b) to cause their Permittees to comply with all Rules respecting the Parking Structure, including, without limitation, posted speed limits, directional signs and parking stall markings. Notwithstanding the provisions of this Section, if any maintenance responsibility of the Manager results in unusual or extraordinary expenses due to the grossly negligent use or operation of the Parking Structure by an Owner or its Permittees, then the Committee may surcharge such Owner for such extra costs. The Manager shall not (x) cause or permit a violation of Environmental Laws to occur as a result of the performance of its duties under this Agreement, (y) modify or restrict the use of the easements granted pursuant to Article VII in any material way, without the consent of the affected Owner, except temporary restrictions in connection with maintenance, repair or replacement responsibilities under this Agreement, nor (z) cause or permit a mechanics, materialmens or laborers lien to attach to the Parking Structure for work performed on the Parking Structure pursuant to this Agreement, other than in connection with such Owners failure to pay its share of expenses hereunder.

5.4 **Damage or Destruction/Condemnation.**

5.4.1 The Manager shall fully restore all Improvements to first-class condition promptly after damage to or destruction of such Improvements. The Committee shall cause the proceeds of the Property Insurance to be available to pay the cost of such restoration and, to the extent required, shall also make available for such purpose such portion of the Capital Reserve Account as shall equal the deductible limits of the Property Insurance. In the event the proceeds of the Property Insurance (including deductibles) are not sufficient to pay the cost of all required restoration, such proceeds shall be allocated to the Owners on an equitable basis taking into account the relative cost of completing restoration on each Parking Structure.

5.4.2 In the event all or any portion of a Parking Structure is taken pursuant to an exercise of the power of eminent domain by any lawful authority (or under threat of such taking), then the Owners of the Parking Levels that are condemned shall each be entitled to their pro-rata share of the award based on the number of hours of Parking Stall usage allocated to such claimant. This Agreement shall terminate as to the portion or portions of the Parking Structure taken, and all portions of the Parking Structure the use of which is materially impaired, as of the date possession is delivered to the condemning authority, but shall continue in effect as to all portions of the Parking Structure not taken.

5.4.3 A reasonable portion of the Assessments to each Owner as determined by the Committee may be abated during the period, if any, that the taking, damage, destruction or restoration materially and adversely interferes with regular access to or use of the affected Parking Level.

5.4.4 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes the Podium to be damaged shall bear the entire cost of furnishing repairs

to the Podium. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owners successors in title.

5.5 **Capital Expenditures.** Except as otherwise expressly set forth herein, all items of maintenance and repair to the Parking Structure which involve a Capital Expenditure, including the payment of any deductible related to the Committees insurance for the Parking Structure, shall be the responsibility of the Condominium Association and such work shall be performed and coordinated by the Committee by and through the Manager. The Committee shall enforce all warranties pertaining to the Improvements associated with the Parking Structure. The Manager will bid the work to contractors, contract for performance of the work and schedule the work. All such work shall constitute a Parking Expense. The Parking Structure shall at all times be repaired and maintained by the Manager so that it always functions in a first-class condition in a manner consistent with the standards of first-class parking facilities operated in conjunction with first-class office buildings in the Salt Lake County area and, where applicable, in accordance with the provisions of Section 5.2

5.6 **Insurance.** The Condominium Association, either directly or through the Committee and/or the Manager, shall at all times maintain or cause to be maintained the following policies of insurance in respect of the Parking Structure:

5.6.1 Workers compensation insurance required by the State of Utah and Employers Liability Insurance with a limit of not less than One Million Dollars (\$1,000,000);

5.6.2 Garage Keepers Liability Insurance, including Commercial General Liability; and

5.6.3 Garage Keepers Legal Liability Insurance (if the Manager is a person or entity other than one of the Owners).

5.6.4 The policy limits of the insurance described in Section 5.6.2 and 5.6.3 above shall initially be not less than Five Million Dollars (\$5,000,000) in respect to bodily injury or death to any one person in any one accident, not less than Ten Million Dollars (\$10,000,000) in respect to bodily injury or death to more than one person in any one accident and property damage in all instances in an amount not less than Two Million Dollars (\$2,000,000). The policy limits of the insurance described in Section 5.6.2 and 5.6.3 above shall be periodically adjusted not less than once every three years to such minimum limits as shall then be customarily carried by owners of comparable parking facilities in Salt Lake County, Utah as determined by the Committee.

5.6.5 The Committee shall, at its own expense, at all times maintain Property Insurance providing coverage for all risk of physical loss or damage with respect to the Parking Structure, with policy limits sufficient to pay for the replacement costs of the Improvements in the Parking Structure. A maximum \$5,000.00 deductible shall be permitted. Such Insurance shall include earthquake coverage and coverage for flood if and to the extent approved by a Super Majority Vote.

5.6.6 All insurance required under this Agreement shall be provided by responsible insurance companies qualified to do business in the State of Utah and having a Bests Financial Size Category Rating of at least "A VIII" (or, if a Bests rating is not then available, having a comparable rating by a similar nationally recognized institution); provided, however, that if any coverage required to be maintained hereunder is unavailable at a reasonable cost based upon the cost paid by owners of comparable parking facilities in Salt Lake County, Utah from insurance companies having such a rating, then coverage shall be obtained from insurance companies qualified to do business in the State of Utah

with the highest rating available which are offering the coverage required at a reasonable rates. The Committee, upon approval of the Members acting by Super Majority Vote, may maintain insurance coverage with limits in excess of the minimum limits required by this Section.

5.6.7 If they request in writing, all Owners and all Mortgagees shall be named, to the extent possible, as an additional insured on each policy maintained by the Committee. The additional insureds shall be entitled to coverage to the same extent as the insured. If, for any reason, a Person cannot be named as an additional insured, then the Committee shall provide contractual liability insurance coverage in the face amount of the policy in which such party should have been named as an additional insured or loss payee naming the Owners and their respective Mortgagees as loss payees. Each policy of Property Insurance in which it would be appropriate shall contain a standard mortgage loss payable endorsement.

5.6.8 The Owners hereby waive their respective property insurers rights of subrogation against all other Owners and the Permittees of each Owner. As used in this Agreement, the term "Property Insurers" shall mean the insurers providing the insurance described in this Article V and the term "Property Insurance" shall mean the policies of insurance described in this Article V. In the absence of the right to make such waiver on behalf of its insurer, the Committee shall obtain an appropriate clause in, or endorsement to, such Property Insurance providing that its Property Insurers waive their rights of subrogation against the Owners and their Permittees. No Owner shall make any claim against or seek to recover from any other Owner for any loss covered by such respective Property Insurance purchased by or on behalf of such Owner, or which could have been covered had such respective Property Insurance policies been purchased by the Committee as contemplated by this Agreement.

5.6.9 All policies of insurance and similar programs required or permitted hereby shall provide, to the extent available, that they will not be canceled or modified to reduce the limits or scope of coverage unless at least thirty (30) days prior written notice is given to each Person named as an additional insured. All insurance obtained by the Committee shall be primary to, and not contributory with, any insurance carried by any Owner.

5.6.10 The Committee shall, upon request from an Owner, obtain and deliver to such Owner and/or its Mortgagee a complete and certified copy of the policies of insurance, and other appropriate documents evidencing coverage for programs which do not involve insurance policies, in effect with respect to the Parking Structure.

5.7 **Security**. The Committee, by and through the Manager, shall provide security services to the Parking Structure as reasonably determined by the Committee. The Manager shall maintain, repair and replace any security equipment and systems, which security equipment and systems shall meet the specifications established by the Committee, acting upon the approval of its Members as a Super Majority Vote, with the result that all security equipment and systems shall be compatible and permit integrated security operations throughout the Parking Structure. The Committee, acting upon the approval of a Super Majority Vote, may from time to time determine to replace, upgrade, redesign or reconfigure the security equipment and systems in the Parking Structure at the cost of the Committee, payable pursuant to the Budget or from the Capital Reserve Account. Notwithstanding the foregoing, in the event that the cost of replacing security equipment and systems is higher than it otherwise would be for a parking facility operated in connection with an office building due to the special requirements of any Parking Level Owner, then the additional expense that is attributable to such special requirements shall be paid solely by the Owner of such Parking Level.

**ARTICLE VI
RESTRICTIONS ON USE OF PARKING STRUCTURE**

6.1 **Permitted Uses Generally.** The Parking Structure shall be used for the ingress and egress and parking of motor vehicles (including service vehicles) as provided in this Agreement. No portion of the Parking Structure shall be used for any purpose other than those permitted by this Agreement, or as expressed or contemplated by the Master Plan.

6.2 **Nuisances.** No person shall conduct any noxious or offensive trade or activity on any Parking Parcel or any part of the Parking Structure that may be, or become, an annoyance, nuisance or interference with quiet enjoyment, or that may increase the cost of insurance for any Owner. In this regard, all noises, sounds and vibrations emanating from a Parking Parcel, other than those associated with the security and other systems for the Parking Structure, shall be appropriately muffled so as not to be objectionable with respect to intermittent beat, frequency, shrillness or volume.

6.3 **Vehicles and Overnight Parking.** No motorized vehicle may be dismantled, rebuilt, abandoned, stored (for more than twenty-four (24) hours) or repainted on or about the Parking Structure and there shall be no overnight parking on any Level other than the Hotel Level.

6.4 **Hazardous Material.** No Owner or other Person shall produce, release, use, store, transport, handle or dispose of any Hazardous Material within the Parking Structure or otherwise knowingly permit the presence of any Hazardous Material on, under or about the Parking Structure, except in accordance with all Environmental Laws. Any Owner who acquires knowledge that it is in breach of any of the Environmental Laws shall immediately notify the Committee. In the event an Owner shall breach the foregoing prohibition, the Committee shall have the right, but not the obligation, to cure such Owners failure in that regard after the Committee shall have given such Owner reasonable notice and an opportunity to cure such failure. Any Owner whose acts or omissions give rise to a violation of this Section 6.4 shall indemnify, defend (with counsel acceptable to the indemnitee), hold harmless and protect CHCDRA, the Committee (including all Committee members), and all other Owners and Occupants from any and all Environmental Damages arising from such violation. Nothing contained in this Section 6.4 shall be deemed a limitation on, or a waiver of, any rights or remedies available to CHCDRA, the Committee or the Owners, at law or in equity for violation of Environmental Laws.

6.5 **Use of Designated Spaces.** No vehicles may be parked in the Parking Structure except in the designated parking spaces. There shall be no storage or parking of snowmobiles, trailers, mobile homes, recreational vehicles, or vehicles deemed to be too large for a parking space by the Manager or the owner of the applicable Parking Level. The Committee shall have the right to install devices and signage to restrict and control access to the Parking Structure in accordance with the terms of this Agreement and to otherwise regulate its use. The Committee shall further have the right to require users of the Parking Structure to sign a release or waiver of liability in connection with their use. Except for the Public Easement, the easements and leases granted are private and nothing herein should be construed as a public dedication.

**ARTICLE VII
PUBLIC ENTITY PROTECTION**

The Parking Structure, which constitutes a material enhancement to the entire Canyon Centre Project, and to the Hotel Unit and the Office Unit in particular, is or will be constructed in material part through public funding provided by or through the CHCDRA which will be repaid, if at all, only through Tax Increment as provided in the Development Agreement. In view of that public investment, in addition

to the grant of the Public Easement, the Public Entity owner of the Public Easement shall be accorded unique treatment as provided below in this Article VII and elsewhere in this Agreement, the Public Easement, the Condominium Declaration and the Development Agreement, which unique treatment shall perpetually remain in effect:

7.1 **Effect of the Development Agreement.** In the event of any conflict or inconsistency between the Public Entity's rights and duties under this Agreement and its rights and duties under the Development Agreement or the Public Easement, the Development Agreement or the Public Easement, as applicable, shall control to the extent that the Public Entity's rights are thereby enhanced and/or the Public Entity's duties are thereby diminished.

7.2 **Continuing Limitations on Financial Responsibilities.** Notwithstanding anything in the Condominium Declaration or this Agreement to the contrary, the Public Entity shall not be responsible for, and shall be completely excused from, any obligation to pay, satisfy or be legally responsible for any Parking Expenses and Assessments of all types hereunder, replacement costs, repair costs, maintenance costs, or other charges, costs, fees, expenses, or impositions of whatever type or nature on or attributable to the Parking Structure except to the extent of any monies received through tax increment or revenues from Parking Fees related to the Public Stalls. No penalties, liens, causes of action, restrictions or other detriments shall accrue or be imposed on the Public Entity or the public's rights under the Public Easement by reason of the limitations on the Public Entity's financial responsibilities under this Section 7.2; provided that if there are insufficient funds obtained from Tax Increment or Parking Revenue from the Public Stalls to cover 20% of the Parking Expenses and Capital Expenditures, then the delinquent amount shall be due and payable from and **only** from (a) any portion of the Tax Increment that is specifically designated in the "Distribution Chart" attached to the Development Agreement for use in operation and maintenance of the Parking Structure; or (b) Parking Fees revenues from the Public Stalls in subsequent years. The Condominium Association shall indemnify, defend and hold the Public Entity harmless from and against any and all actions, causes of action, claims, damages, fees (including attorneys fees), costs and expenses constituting, arising from, or attributable to such delinquent amounts not available for payment.

7.3 **Further Limitations.** In no event shall the Public Entity be obligated (a) to maintain, repair, restore, replace or rebuild any of the Parking Structure except to the extent of any funds received from Tax Increment and Parking Fees; or (b) to itself carry insurance coverage of any type on or for the Parking Structure or the Public Stalls (with the exception of workers compensation insurance coverage for any employees of the Public Entity which may be assigned to work in the Parking Structure). The Condominium Association shall indemnify, defend and hold the Public Entity harmless from and against any and all actions, causes of action, claims, damages, fees (including attorneys fees), costs and expenses constituting, arising from, or attributable to any use or operation of the Parking Structure up to the limit of liability for the insurance obtained by the Condominium Association.

7.4 **Priority of Public Easement.** In order for the Public Easement to clearly attach to the Condominium Project, it is intended that the Public Easement will be recorded after recording of the Master Declaration, the Condominium Plat and the Condominium Declaration in the office of the Recorder of Salt Lake County, Utah, but before recording of this Agreement and any conveyance of Units. **Notwithstanding any prior recording of the Master Declaration, the Condominium Declaration, the Condominium Plat and/or this Agreement before recording of the Public Easement, any and all parking and other rights of the Owners, occupants, invitees or others in and to the Parking Structure are forever subordinate and subject to the Public Easement from and after recording of the Public Easement materially in the form attached hereto as Attachment 3 in the office of the Recorder of Salt Lake County, Utah, to the same extent as if the Master**

Declaration, the Condominium Declaration and this Agreement had been recorded after recording of the Public Easement, provided that attachment of the Public Easement to, and enforceability of the Public Easement against, the Condominium Project shall be deemed to have occurred notwithstanding such subordination. To that end, if there is any conflict or inconsistency between this Agreement and the Public Easement, the Public Easement shall control. Nothing in this Section 7.4 shall be construed to impair the rights of the Hotel Unit and the Office Unit to park in the Parking Structure at the times and in the locations set forth in the Shared Parking Plan, subject to the public's right to use the Public Stalls as set forth in the Public Easement. The version of the Public Easement attached hereto as Attachment 3 may not be amended in a manner that materially, adversely affects any Owners right to use the Parking Stalls without consent of the Condominium Association and the owners of the Hotel Unit and the Office Unit.

7.5 **No Contrary Amendment.** Notwithstanding anything in this Agreement to the contrary, the rights and privileges of the Public Entity under this Article VII may not be modified or amended without the prior written consent of the Public Entity.

ARTICLE VIII GENERAL PROVISIONS

8.1 **Attorneys Fees.** In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, or otherwise pertaining to a dispute concerning, this Agreement or any provision of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in such amount as may be fixed by the court in such proceedings.

8.2 **Failure to Enforce Not a Waiver of Rights.** The failure of the Committee or any Owner to enforce any covenant, condition or restriction herein contained, by reference or otherwise, shall in no event be deemed a waiver of the right to do so thereafter, nor of the right to enforce and other covenants, condition or restriction.

8.3 **Arbitration.** For disputes hereunder (other than disputes within the Committee which are arbitrated pursuant to Section 2.8 above) that are not resolved by the Members or an Owner, as the case may be, within ten (10) days after the Member(s) constituting a Majority of an Owner, gives notice to the other Members or Owners of a desire to arbitrate the dispute, the dispute shall be settled by binding arbitration by the American Arbitration Association in accord with its then-prevailing rules. Judgment upon the arbitration award may be entered in any court having jurisdiction. The arbitrators shall have no power to change the provisions of this Agreement. The arbitration panel shall consist of three arbitrators, one of whom must be a real estate attorney actively engaged in the practice of law for at least the last five (5) years. The Members and Owners, as the case may be, shall continue performing their obligations under this Agreement pending the decision in the arbitration proceeding. The arbitrators shall award the prevailing part(ies) reasonable expenses and costs including reasonable attorneys fees.

8.4 **Constructive Notice and Acceptance.** Every Person who now owns or hereafter acquires any right, title or interest in or to any portion of the Parking Structure is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement contained in this Agreement, regardless of whether any reference to this Agreement is contained in the Instrument by which such Person acquired an interest.

8.5 **Mutuality: Reciprocity: Runs with Land.** All restrictions, conditions, covenants and easements contained herein, by reference or otherwise: (a) are made for the direct, mutual and reciprocal benefit of each and every Parking Level; (b) shall create mutual, equitable servitudes upon each Parking

Parcel in favor of every other Parking Level; (c) shall create reciprocal rights and obligations between the respective Owners of all portions of or interests in the Parking Levels and privity of contract and estate between all grantees of such portions or interests therein, their heirs, successors and assigns; and (d) shall, as to each Owner and the heirs, successors and assigns of such Owner, operate as covenants running with the land for the benefit of the Owners of each other Parking Level.

8.6 **Article and Section Headings.** The Article and Section headings used in this Agreement are inserted for convenience only and are not intended to be a part of this Agreement or in any way to define, limit or describe the scope and intent of the respective Articles and Sections to which they refer.

8.7 **Invalidity of Provisions.** If a court of competent jurisdiction should hold any provision of this Agreement, or the application of this Agreement to any Person or any circumstance, to be invalid, void or illegal, the remaining provisions of this Agreement and the application of this Agreement to any other Person and any circumstance, shall nevertheless remain in full force and effect to the maximum extent permitted by law and shall not be affected thereby.

8.8 **Amendments.** From and after the Effective Date, this Agreement may be amended with the written approval of a Super Majority Vote; provided, however, that Article VII may not be amended without consent of the Public Entity.

8.9 **Estoppel Certificate.** Within ten (10) working days after written request, the Committee and/or each Owner shall provide to any requesting Owner and/or its existing or prospective Mortgagee in estoppel certificate stating, to the actual knowledge of the certifying party (a) whether the certifying party knows of the existence of any breach, violation or event of default under this Agreement by any Owner, including the requesting Owner, and, if the certifying party has such knowledge, a reasonably detailed explanation thereof; (b) whether the rights or interest of the requesting Owner under this Agreement have been assigned, modified or amended in any way and, if so, the nature thereof; and (c) that this Agreement is in full force and effect as of the date of the estoppel certificate. For such statement, such certifying party shall be entitled to charge a fee, not to exceed the greater of (y) Two Hundred Dollars (\$200) in 1997 and thereafter Adjusted Annually by the Cost of Living Index, or (z) its actual administrative expenses in rendering the same, whichever is less.

8.10 **Notices.** Any notice, demand, communication, certification, approval, consent, invoice and/or request (individually referred to as "Notice"), required or allowed hereunder to be given to or by CHCDRA, Committee, the Committee, an Owner or a Mortgagee, shall be in writing and shall be delivered personally or by reliable, receipted courier service, overnight mail service, facsimile transmission, certified mail (with Postage Prepaid, return receipt requested), or another commercially recognized means of delivery. Notice shall be deemed given when actually received except that notice by facsimile transmission shall be deemed given at 10:00 a.m. on the next business day after receipt.

8.11 **Good Faith: Non-Discrimination.** The Committee shall at all times act in good faith and shall not take any action that is materially detrimental to one Owner while at the same time benefitting other Owner(s), without first obtaining the written consent of the Owner who is adversely affected.

8.12 **Force Majeure.** Each and every period set forth in this Agreement shall be extended for a period or periods of time equal to any period or periods of delay preventing the performance of any of the Owners respective obligations, which delays are caused by strikes, lock-outs, fire or other casualty, inclement weather, the elements or acts of God, refusal or failure of governmental authorities to grant necessary approvals and permits, war, riot, insurrections, or shortages of or inability to obtain essential

construction materials or the transportation thereof, or other causes, other than financial, beyond their reasonable control; provided, that the CHCDRA shall not be deemed to be a governmental agency for purposes of this Section 8.12.

8.13 **No Relationship of Principal and Agent.** This Agreement creates relationships of privity of contract and privity of estate between the Committee and the Owners. Neither the provisions of this Agreement nor any acts of the Committee or the Owners shall be deemed or construed to create any other relationship, including, without limitation, relationships of principal and agent, of limited or general partnership, of joint venture or of any other similar association between any of the Owners, Committee or CHCDRA.

8.14 **Governing Law.** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

8.15 **Parking Easement.** This Agreement shall not modify the respective rights and obligations of the County, CHCDRA or Developer under the Public Easement.

IN WITNESS WHEREOF, Developer has executed this Agreement as of the date first above written.

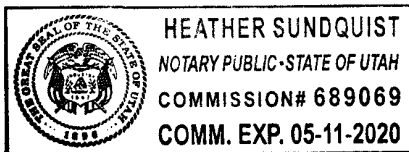
CANYON CENTRE CAPITAL, LLC,
a Utah limited liability company

By: C.W. MANAGEMENT CORPORATION,
a Utah corporation, its Manager

By: Chris McCandless
Chris McCandless, President

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

On this 21 day of December 2018, personally appeared before me **Chris McCandless**, who duly acknowledged to me that he signed the foregoing agreement as the President of **C.W. Management Corporation**, a Utah corporation acting in its capacity as the manager of **Canyon Centre Capital, LLC**.



Heather Sundquist
Notary Public

Attachment 1
Condominium Property Legal Description

Lot 2, **CANYON CENTRE Amending Wasatch Gates Subdivision**, according to the official plat recorded on April 8, 2015 as Entry No. 12026637, in Book 2015P of Plats, at Page 83 of the official records of the Salt Lake County Recorder.

Tax Parcel No. 22-25-176-023.

Attachment 2
Shared Parking Plan

Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah

4-Dec-18

Contents:

1. *Shared Parking Plan*
2. *Site Plan showing surface parking rights*
3. Weekend and Holiday Parking Stall Allocation
4. Weekday Parking Stall Allocation
5. Weekday Evening Parking Stall Allocation
6. Weekend Evening Parking Garage Stall Allocation (P2 Only)

Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah
4-Dec-18

Lot Two Parking Required (Standard)

Use	Quantity	Peak Ratio	Required
2A. Hotel	152	0.75	114
2C. Restaurant	5500	0.01	55
2D. Retail	3300	0.005	17
2B. Office	65000	0.004	260
2E. Retail	3300	0.005	18
Total			464

Total	464
Total Required	464

Lot Two Parking Provided

Land Use	Qty
Structure (Level P3)	55
Structure (Level P2)	145
Structure (Level P1)	217
Office 1 (surface)	17
Unrestricted surface stalls	6
Retail (2 Units surface only)	37
Restaurant (surface only)	4
Hotel (surface)	4
Total Parking Provided	569

417 Parking Structure stalls

Canyon Centre: Lot Two Shared Parking Analysis

Year-Round Uses

Weekday	Mon-Fri
8 am-6 pm	

Weekday	Mon-Fri
6 pm-12 am	

Weekday	Mon-Fri
12 am-8 am	

Weekend and Holidays	Sat & Sun
6 am-6 pm	

Weekend and Holidays	Sat & Sun
6 pm-12 am	

Weekend and Holidays	Sat & Sun
12 am-8 am	

Land Use	Qty	8 am-6 pm		6 pm-12 am		12 am-8 am	
		%	Spaces	%	Spaces	%	Spaces
Hotel	114	71%	123	133%	152	133%	152
Restaurant/Retail (surface stalls)	92	100%	92	100%	92	100%	92
Office 1	260	105%	274	27%	72	27%	72
Total	466		489		316		316

Land Use	Qty	6 am-6 pm		6 pm-12 am		12 am-8 am	
		%	Spaces	%	Spaces	%	Spaces
Hotel	114	81%	123	133%	152	100%	152
Restaurant/Retail (surface stalls)	92	100%	92	100%	92	100%	92
Office 1	260	27%	72	27%	72	27%	72
Total	466		287		316		316

Public Use / Availability	0	137	137	202	173	192
Non-exclusive stalls available to public	0	137	137	202	173	192
Dedicated canyon recreation garage stalls (24/7)	80	80	80	80	80	80
Total Available	80	217	217	282	253	272

- Notes:**
- Eighty of the P1 parking stalls as shown on the Plan are dedicated for use by Canyon Recreationalist only (24/7).
 - Twenty Five of the the public P2 Stalls allocated for use on Weekends and Holidays (not including the 80 exclusive Hotel stalls) become available to the Hotel as defined in the Development Agreement from 6PM.
 - The hotel staff guests that are parked in one of the 25 P2 public stalls after 6PM shall be given latitude to remain parked in those stalls beyond the 6AM time until the hotel checkout times on Weekends and Holidays.
 - No overnight canyon recreationalist or public parking is permitted from 12am-6am.

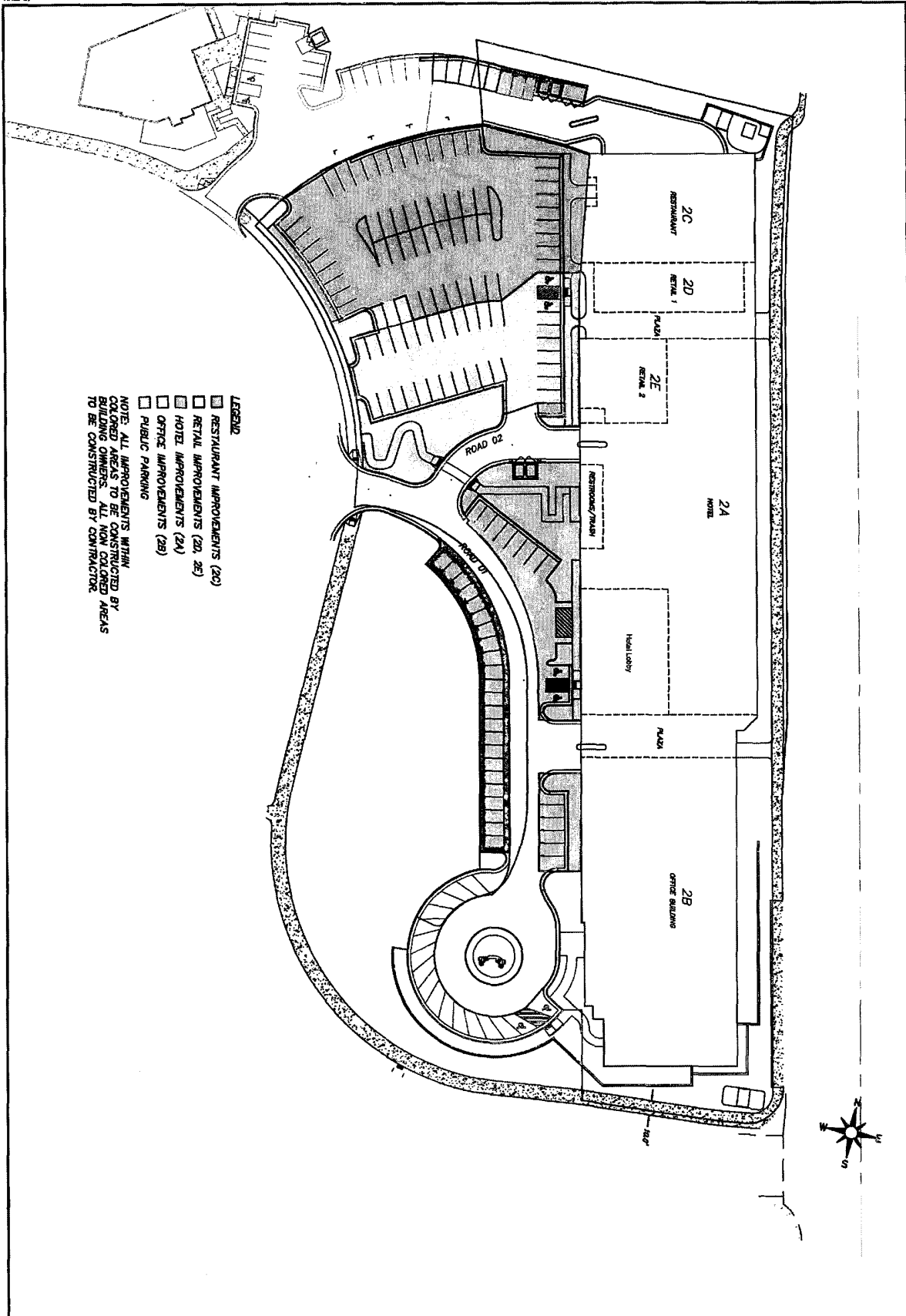
Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah

4-Dec-18

Site Plan Showing Surface Parking Rights and Notes

VREFS:



LEGEND

- RESTAURANT IMPROVEMENTS (2C)
- RETAIL IMPROVEMENTS (2D, 2E)
- HOTEL IMPROVEMENTS (2A)
- OFFICE IMPROVEMENTS (2B)
- PUBLIC PARKING

NOTE: ALL IMPROVEMENTS WITHIN COLORED AREAS TO BE CONSTRUCTED BY BUILDING OWNERS. ALL NEW COLORED AREAS TO BE CONSTRUCTED BY CONTRACTOR.

EXHIBIT
 SHEET NUMBER
 00187

DATE: _____ TIME: _____
 NETWORK: _____
 PATH: _____
 DWG NAME: _____
 LAYOUT: _____
 DESIGNER: _____ MGR: _____

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**CANYON CENTER PHASE 1
 PARKING EXHIBIT**

PREPARED FOR: CHRIS McCANDLESS DATE SUBMITTED: 12/30/2017

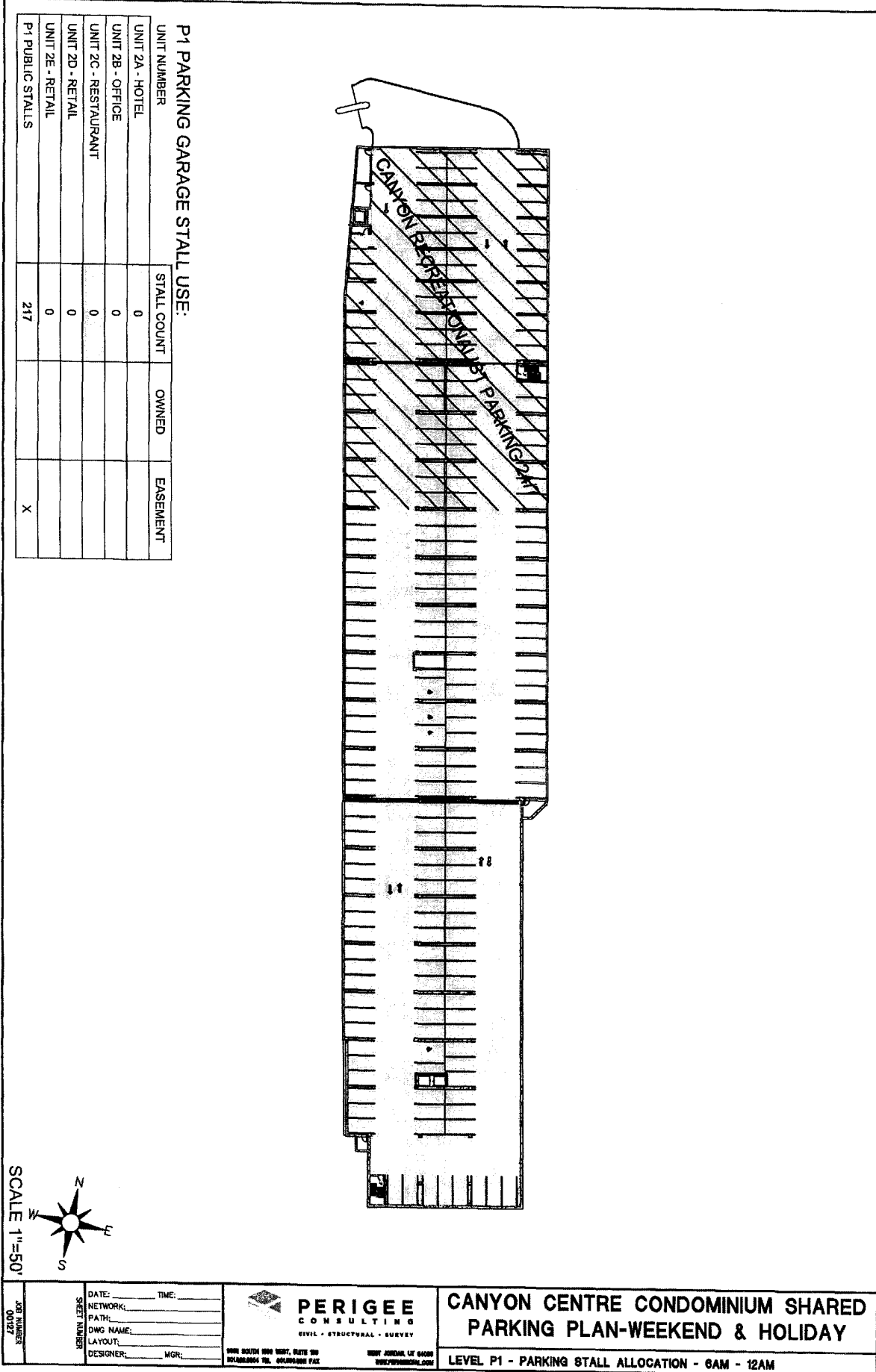
Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah

4-Dec-18

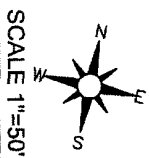
Weekend and Holiday Parking Stall Allocation

XREFS:



P1 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	0		
UNIT 2B - OFFICE	0		
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P1 PUBLIC STALLS	217		X



DATE: _____	TIME: _____
NETWORK: _____	
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DWG NAME: _____	
LAYOUT: _____	
DESIGNER: _____	MGR: _____


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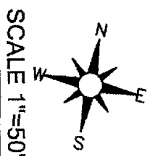
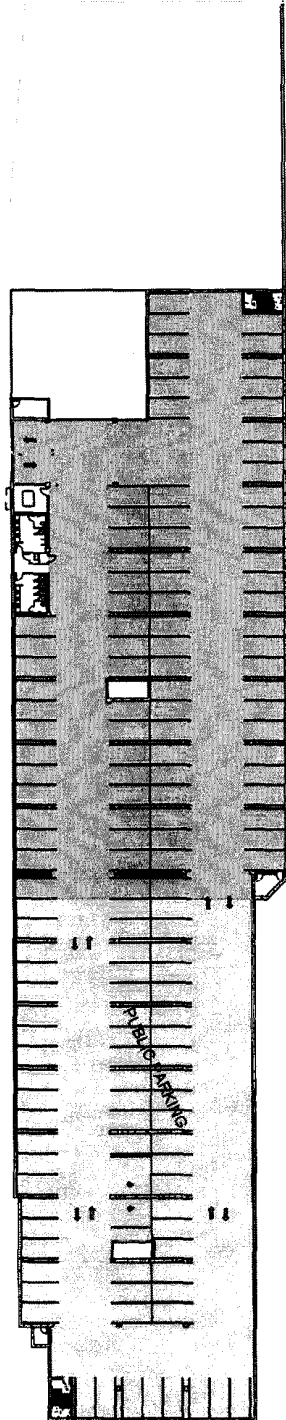
**CANYON CENTRE CONDOMINIUM SHARED
 PARKING PLAN-WEEKEND & HOLIDAY**

LEVEL P1 - PARKING STALL ALLOCATION - 6AM - 12AM

XREFS:

P2 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	46	X	
UNIT 2B - OFFICE	0		
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	65		X



SCALE 1"=50'

JOB NUMBER: 00127

SHEET NUMBER:

DATE: _____ TIME: _____

NETWORK: _____

PATH: _____

DWG NAME: _____

LAYOUT: _____

DESIGNER: _____ MGR: _____

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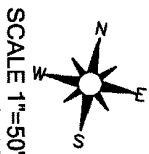
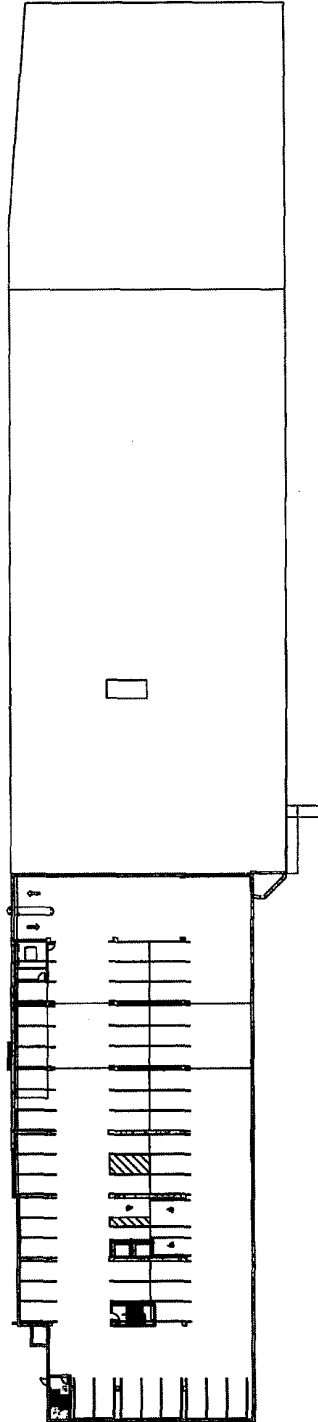
CANYON CENTRE CONDOMINIUM SHARED PARKING PLAN-WEEKEND & HOLIDAY

LEVEL P2 - PARKING STALL ALLOCATION - 6AM - 6PM

REFS:

P3 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	0		
UNIT 2B - OFFICE	55	X	
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	0		



SCALE 1"=50'

JOB NUMBER 00197	SHEET NUMBER DATE: _____ TIME: _____ NETWORK: PATH: DWG NAME: LAYOUT: DESIGNER: _____ MGR: _____	 <p>PERIGEE CONSULTING CIVIL • STRUCTURAL • SURVEY</p> <p>4000 SOUTH 2400 WEST, SUITE 200 DURANGO, CO 81301 970.247.1111</p> <p>1001 JORDAN ST SUITE 200 DURANGO, CO 81301 970.247.1111</p>	<p>CANYON CENTRE CONDOMINIUM SHARED PARKING PLAN-WEEKEND & HOLIDAY</p> <p>LEVEL P3 - PARKING STALL ALLOCATION - 8AM - 6PM</p>
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Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah

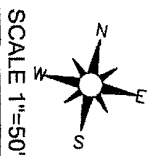
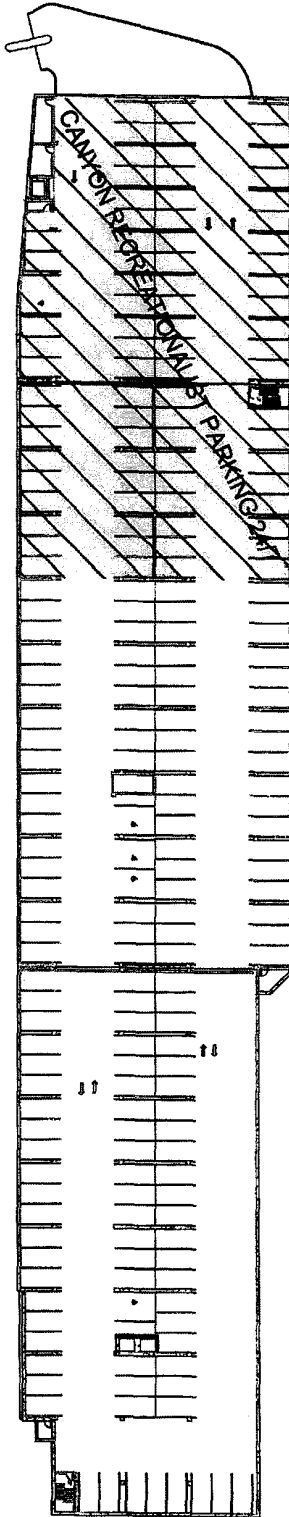
4-Dec-18

Weekday Parking Garage Stall Allocation

XREFS:

P1 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	0		
UNIT 2B - OFFICE	137		X
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P1 PUBLIC STALLS	80		X



DATE: _____ TIME: _____
 NETWORK: _____
 PATH: _____
 DWG NAME: _____
 LAYOUT: _____
 DESIGNER: _____ MGR: _____

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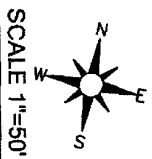
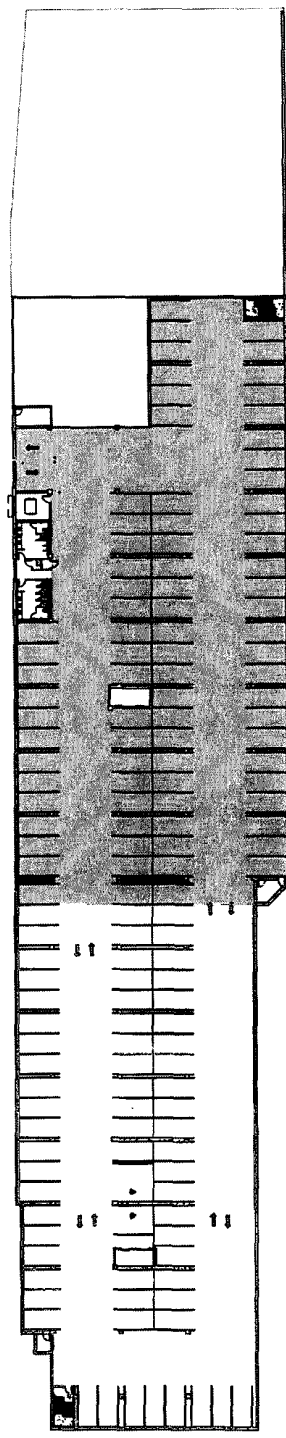
**CANYON CENTRE CONDOMINIUM SHARED
 PARKING PLAN-WEEKDAY**

LEVEL P1 - PARKING STALL ALLOCATION - 8AM - 6PM

REFS:

P2 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	80	X	
UNIT 2B - OFFICE	65		X
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	0		



0027

DATE: _____ TIME: _____
 NETWORK: _____
 PATH: _____
 DWG NAME: _____
 LAYOUT: _____
 DESIGNER: _____ MGR: _____

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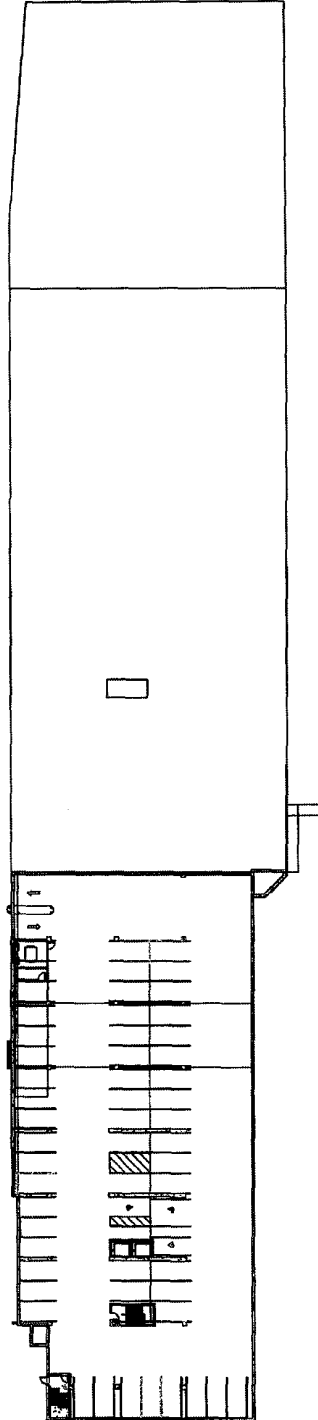
CANYON CENTRE CONDOMINIUM SHARED PARKING PLAN-WEEKDAY

LEVEL P2 - PARKING STALL ALLOCATION - 8AM - 6PM

REFS:

P3 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	0		
UNIT 2B - OFFICE	55	X	
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	0		



<p>DATE: _____ TIME: _____</p> <p>NETWORK: _____</p> <p>PATH: _____</p> <p>DWG NAME: _____</p> <p>LAYOUT: _____</p> <p>DESIGNER: _____ MGR: _____</p>	 <p>PERIGEE CONSULTING <small>CIVIL • STRUCTURAL • SURVEY</small></p>	<p>CANYON CENTRE CONDOMINIUM SHARED PARKING PLAN-WEEKDAY</p> <p>LEVEL P3 - PARKING STALL ALLOCATION - 8AM - 6PM</p>
<p>308 N. ALBERTA SUITE 200 DENVER, CO 80202</p>	<p>1000 SOUTH 1000 WEST, SUITE 500 SANDALWOOD THE BOUNDARY PLAZA WEST JORDAN UT 84064 2025PERIGEE.COM</p>	

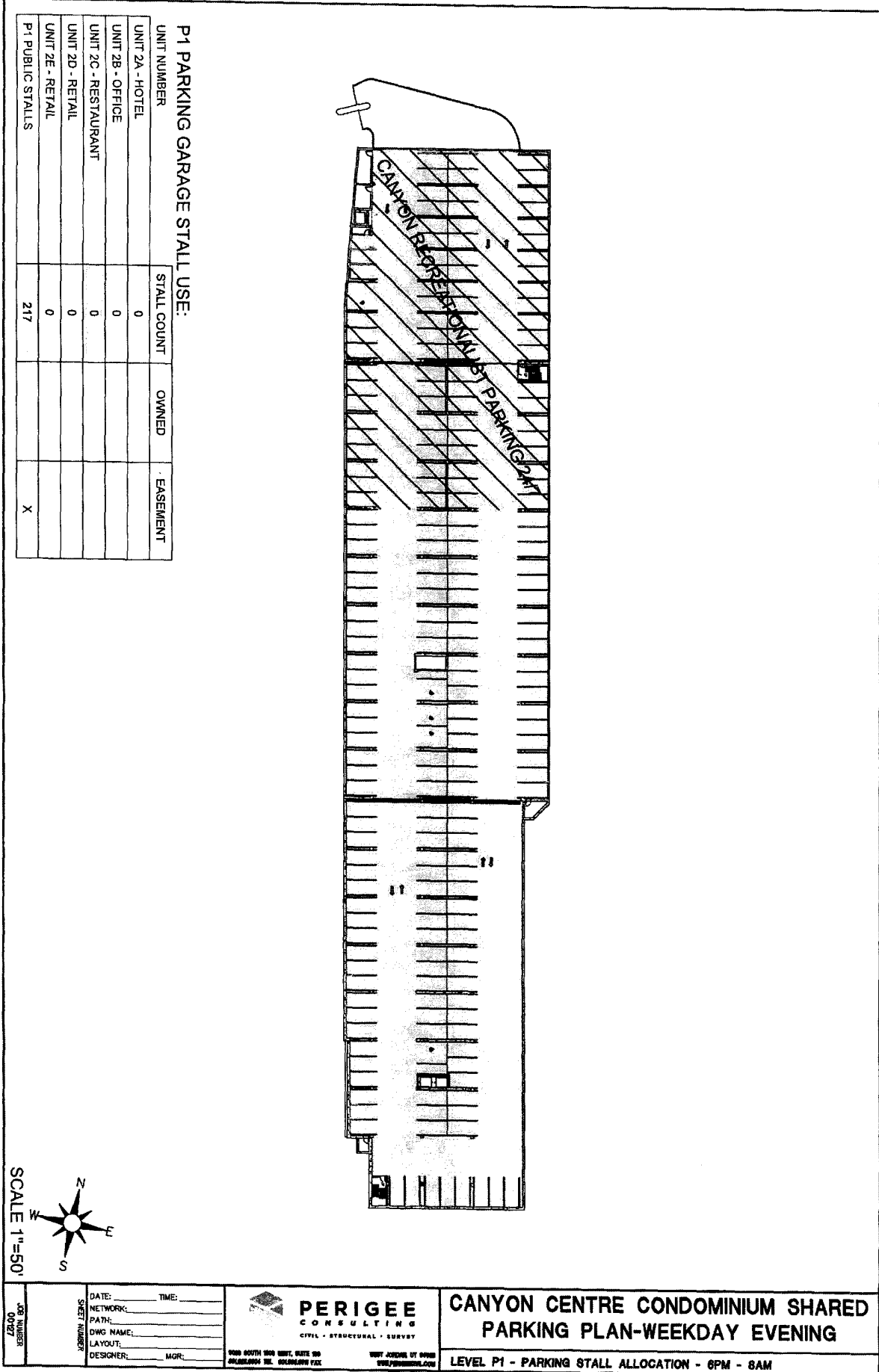
Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah

4-Dec-18

Weekday Evening Parking Garage Stall Allocation

XREFS:



JOB NUMBER: 00727

SHEET NUMBER: _____

DATE: _____ TIME: _____

NETWORK: _____

PATH: _____

DWG NAME: _____

LAYOUT: _____

DESIGNER: _____ MGR: _____

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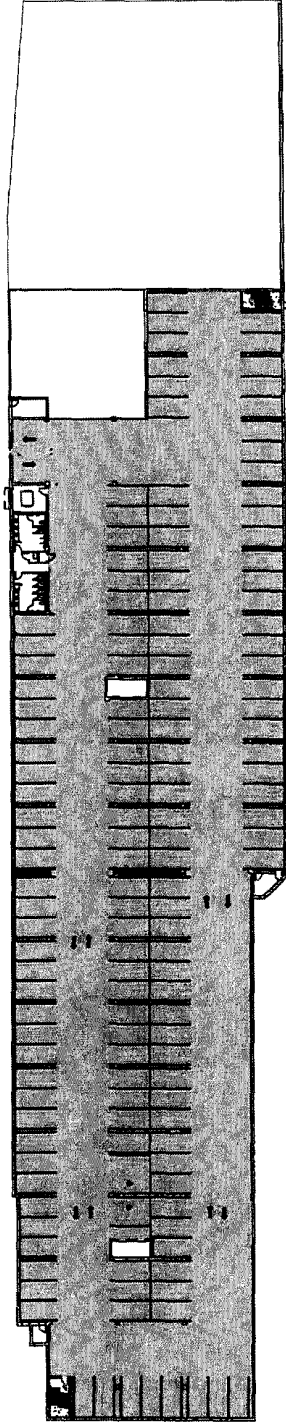
9000 SOUTH 1900 WEST, SUITE 100
 GREENWOOD VILLAGE, COLORADO 80037

WEST JORDEN, UT 84088
 WWW.PERIGEE.COM

CANYON CENTRE CONDOMINIUM SHARED PARKING PLAN-WEEKDAY EVENING

LEVEL P1 - PARKING STALL ALLOCATION - 6PM - 8AM

REF:



P2 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	145	X	
UNIT 2B - OFFICE	0		
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	0		



00 NUMBER
0027

DATE: _____ TIME: _____
 NETWORK: _____
 PATH: _____
 DWG NAME: _____
 LAYOUT: _____
 DESIGNER: _____ MGR: _____



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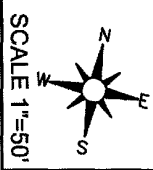
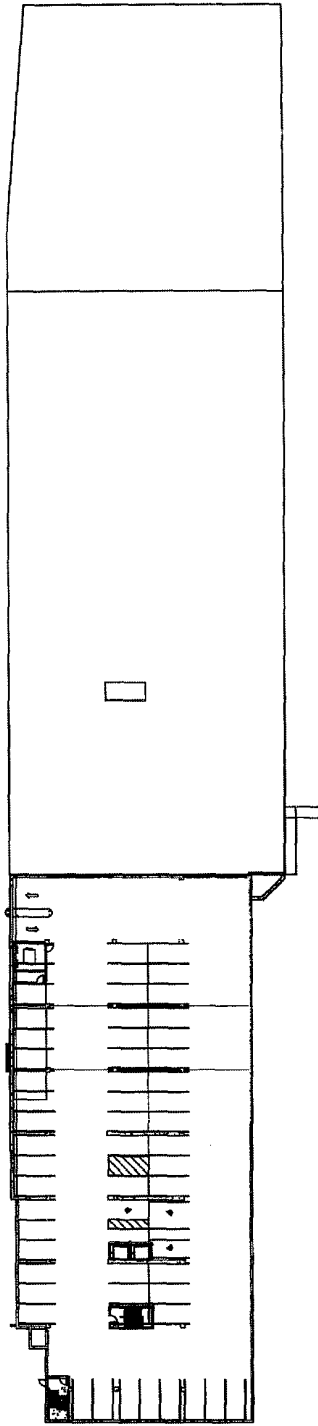
**CANYON CENTRE CONDOMINIUM SHARED
 PARKING PLAN-WEEKDAY EVENING**

LEVEL P2 - PARKING STALL ALLOCATION - 6PM - 8AM

REFS

P3 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	0		
UNIT 2B - OFFICE	55	X	
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	0		



SHEET NUMBER 0007	DATE: _____ TIME: _____ NETWORK: _____ PATH: _____ DWG NAME: _____ LAYOUT: _____ DESIGNER: _____ MGR: _____	 <p>PERIGEE CONSULTING CIVIL • STRUCTURAL • SURVEY</p> <p><small>2000 ROUTE 200 WEST, SUITE 100 DUBLINOCH, TN 37040-1000 FAX 615-966-1000</small></p> <p><small>TRUST JORDAN UT 0000 WWW.PERIGEECONS.COM</small></p>	<p>CANYON CENTRE CONDOMINIUM SHARED PARKING PLAN-WEEKDAY EVENING</p> <p>LEVEL P3 - PARKING STALL ALLOCATION - 6PM - 8AM</p>
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Canyon Centre Condominium Shared Parking Plan

Cottonwood Heights City, Utah

4-Dec-18

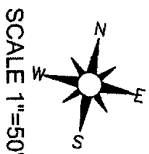
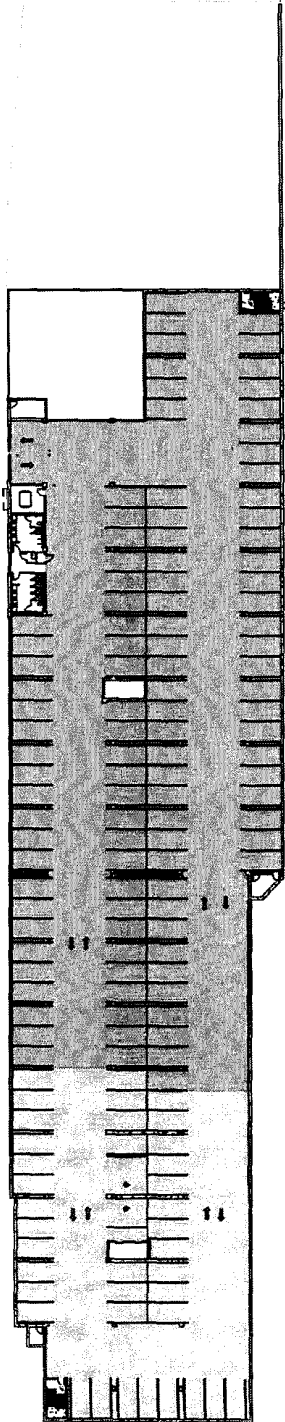
Weekend Evening Parking Garage Stall Allocation

(Affects Level P2 only)

XREFS:

P2 PARKING GARAGE STALL USE:

UNIT NUMBER	STALL COUNT	OWNED	EASEMENT
UNIT 2A - HOTEL	105	X	
UNIT 2B - OFFICE	0		
UNIT 2C - RESTAURANT	0		
UNIT 2D - RETAIL	0		
UNIT 2E - RETAIL	0		
P2 PUBLIC STALLS	40		



JOB NUMBER
00197

DATE: _____ TIME: _____
 NETWORK: _____
 PATH: _____
 DWG NAME: _____
 LAYOUT: _____
 DESIGNER: _____ MGR: _____

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**CANYON CENTRE CONDOMINIUM SHARED
 PARKING PLAN-WEEKEND EVENING**

LEVEL P2 - PARKING STALL ALLOCATION - 6PM - 6AM

Attachment 3
Form of Public Easement

AFTER RECORDING MAIL TO:

COTTONWOOD HEIGHTS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY
Attn: B. Tim Tingey, Executive Director
2277 East Bengal Blvd.
Cottonwood Heights, UT 84121

Public Parking Easement Agreement

THIS PUBLIC PARKING EASEMENT AGREEMENT (this “*Agreement*”) is entered into by and among **CANYON CENTRE CAPITAL, LLC**, a Utah limited liability company whose address is 9067 South 1300 West, Suite 105, West Jordan, Utah 84088-5582 (“*Grantor*”); the **COTTONWOOD HEIGHTS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY**, a governmental entity organized under the laws of the state of Utah whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 (“*Agency*”); and **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah whose address is 2001 South State Street, #S3-600, Salt Lake City, UT 84190 (“*County*”) (Agency and County are collectively referred to herein as “*Grantee*”). Grantor and Grantee are sometimes referred to collectively as the “*Parties*” and either may be referred to individually as a “*Party*,” all as governed by the context in which such words are used. **THE CANYON CENTRE CONDOMINIUM ASSOCIATION** (the “*Condominium Association*”) also is a party to this Agreement for the limited purposes of Sections 2-4, inclusive, and 11 below.

RECITALS:

A. In furtherance of the objectives of the “Limited Purpose Local Government Entities--Community Reinvestment Agency Act,” UTAH CODE ANN. Title 17C, Chapters 1 through 5 (including any future amendments or successors, the “*Act*”), Agency has undertaken a program for the development of the Canyon Centre Community Development Project Area (the “*Project Area*” or the “*Project*”) located at approximately 7350 South Wasatch Blvd. in the city of Cottonwood Heights, Salt Lake County, Utah (“*City*”).

B. Agency has prepared, and City has approved, a community development plan (the “*Plan*”) providing for the development of the land located within the Project Area and the future uses of such land.

C. The Project Area consists of approximately 10.89 acres which Grantor, as developer, has agreed to develop with certain private and public improvements as provided in the Plan. One or more plats (collectively, the “*Plat*”) subdividing the Project Area into five lots (“*Lots*”) has been recorded in the official records of County’s Recorder. The division of the Lots as shown on the Plat contemplates the development of the separate uses in the Project Area.

D. Lot 1 of the Project Area has been or will be developed into a public park (the “*Park*”). Lot 2 of the Project Area has been or will be condominiumized and developed to include several buildings (the “*Condominium Project*”) including a hotel (the “*Hotel Unit*”), a commercial office building (the “*Office Unit*”), and various retail and restaurant buildings, each of which will be separate condominium units (“*Units*”) under separate ownership. The Units will rest on a structural podium which, in turn, will rest on a three-level parking structure (the “*Parking Structure*”) containing at least 415 parking stalls (the “*Parking Stalls*”). The legal descriptions of

the Project Area, of Lot 2 of the Project Area and of the Parking Structure within said Lot 2 are set forth in ATTACHMENT NO. 1 to this Agreement.

E. Level P1 of the Parking Structure will contain approximately 217 Parking Stalls, Level P2 will contain approximately 145 Parking Stalls, and Level P3 will contain approximately 55 Parking Stalls. Each level within the Parking Structure will be included within one of the Units, with Levels P1 (comprising Unit 2B-1 and sometimes called "*Parking Level 1*") and P3 (comprising Unit 2B-3 and sometimes called "*Parking Level 3*") being included in the Office Unit (comprising Unit 2B), and Level P2 (comprising Unit 2A-2 and sometimes called "*Parking Level 2*") being included within the Hotel Unit (comprising Unit 2A). The use of all Parking Stalls will be monitored at the gates of the Parking Structure as vehicles enter and exit. Grantor will erect access gates, ticketing/payment booths or kiosks, or other similar improvements in the Parking Structure to aid in controlling access to and use of the Parking Structure.

F. Grantor has recorded or will record a master declaration of covenants, conditions and restrictions and a first amendment to such master declaration (collectively, the "*Master Declaration*") against the entire Project and has recorded or will record the condominium declaration (the "*Condominium Declaration*") (the Master Declaration and the Condominium Declaration are collectively referred to herein as the "*Declarations*") against Lot 2 of the Project in connection with the development of the Project. The Condominium Association will be responsible for operation and maintenance of the Project's common areas and for performing other duties described in the Declarations and the "Master Parking Agreement" (the "*Master Parking Agreement*") that will encumber the Units as contemplated by the Condominium Declaration.

G. Grantor and Agency have or will enter into a "Development Agreement" (the "*Development Agreement*") for the Project whereunder, among other provisions, Agency will issue the Private Bond (as defined in the Development Agreement) and pay up to \$7.75 Million (the "*Purchase Price*") of public funds which originated from County—for, *inter alia*, a perpetual, exclusive easement for public parking in certain of the Parking Stalls during certain times on certain days as explained in the Development Agreement and this Agreement, which funds will be recouped by Agency and County through future tax increment payments arising from the Project as contemplated by the Plan (the "*Tax Increment*").

H. Agency's and County's decision to purchase such parking rights and easement is based on their determination that the availability of public parking in the Project likely will help alleviate traffic and vehicle congestion in Big Cottonwood Canyon and Little Cottonwood Canyon, thereby furthering the health, safety and welfare of City and County residents and being in accord with the public purposes and provisions of the applicable state laws and requirements under which development of the Project Area is undertaken.

I. The Parties desire to enter into and record this Agreement to evidence and assure that the parking rights and easement in and to the Parking Structure accrue and perpetually are available to Agency, County and the public as provided in the Development Agreement and this Agreement.

A G R E E M E N T:

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. **Grant of Public Easements.** Conditioned on full and timely performance of all of Agency's funding obligations and issuance of the Private Bond, all as provided in the Development Agreement, Grantor hereby **grants, conveys and warrants** to Agency and County, and their respective successors and assigns, for the use and benefit of the general public, the following perpetual, irrevocable easements (the "*Public Easements*") on the Parking Structure and the surrounding Project Area to the extent necessary to provide access to Canyon Centre Parkway:

(a) *Public Parking.*

(i) An exclusive easement for the general public to use the Parking Stalls as specified below:

(A) 80 of the Parking Stalls located on Parking Level 1 (the "*Exclusive Public Stalls*") shall be designated for exclusive use by the general public 24 hours per day, 365 days per year. Signage stating "CANYON PARKING ONLY. No Hotel/Office Parking," or other verbiage specified by Grantee, shall be placed by each of the Exclusive Public Stalls to clarify that such stalls may not be used by employees, customers or other users of the Office Unit or the Hotel Unit. Such signage, its size, color, letter font and placement, shall be subject to the prior reasonable approval of Grantee. The location of the 80 Exclusive Public Stalls may not be modified without Grantee's prior written consent; and

(B) Other Parking Stalls (the "*Nonexclusive Public Stalls*," which term shall not include any of the Exclusive Public Stalls) in addition to the Exclusive Public Stalls shall be designated for use by the general public as follows:

(1) 137 of the Parking Stalls located on Parking Level 1 shall be available for Public Use (defined below) from 6:00 p.m. to midnight on business days and from 6:00 a.m. to midnight on weekends and federal or state holidays (excluding Columbus Day and Veterans Day); and

(2) An additional 65 of the Parking Stalls located on Parking Level 2 shall be available for Public Use on weekends and federal or state holidays (excluding Columbus Day and Veterans Day), with 40 of those stalls designated for Public Use from 6:00 a.m. to midnight, and the remaining 25 of those stalls designated for Public Use from 6:00 a.m. to 6:00 p.m.

The 24/7/365 public use times for the Exclusive Public Stalls and the above-specified public use times for the Nonexclusive Public Stalls are collectively referred to herein as the "*Public Use Times*."

(ii) The Exclusive Public Stalls, and the Nonexclusive Public Stalls during the Public Use Times, as described above are referred to herein as the "*Public Stalls*." The location and grouping of the Public Stalls are depicted on the shared parking plan (the "*Shared Parking Plan*") which is attached hereto as **ATTACHMENT NO. 2** to this Agreement. In this Agreement, the term "*Public Use*" means use of the Public Stalls as provided in this Section 1(a).

(iii) In order to reduce congestion in Big Cottonwood Canyon and Little Cottonwood Canyon, use of the 80 Exclusive Public Stalls shall be reserved for members of the general public who are then visiting those canyons and shall not be available for use by owners, tenants, occupants, customers, guests or invitees of any Unit except to the extent, and for the

duration, that such persons are then visiting those canyons. Grantee may modify the scope of permissible Public Use of the Exclusive Public Stalls beyond solely parking for canyon visitors by written resolutions enacted by both Agency and County. Grantee also may, at its cost, erect access gates, ticketing/payment booths or kiosks, or other similar improvements in an appropriate location in the Parking Structure to further prevent or discourage unauthorized use (defined below) of the 80 Exclusive Public Stalls, subject to the Condominium Association's input and prior approval, which may not be withheld, delayed or conditioned unreasonably. Grantee also shall have the right to enforce against unauthorized use of the 80 Exclusive Public Stalls through ticketing, towing, "booting" or other commercially reasonable enforcement methods, with the resulting proceeds belonging solely to Grantee ("*Enforcement Methods*"). In this Agreement, "*unauthorized use*" means use of Parking Stalls by a user or in a manner that is not specifically authorized by this Agreement and the Shared Parking Plan.

During the Public Use Times, Public Use of the Nonexclusive Public Stalls (A) shall include use by members of the general public when taking advantage of the Condominium Project amenities, while visiting the Park, or while visiting the nearby canyons, (B) shall include use by visitors or customers of the Units other than lodging guests of the Hotel Unit (who are provided with adequate parking under the Master Parking Agreement), but (C) shall not include owners, tenants, occupants, or employees of any Unit or a business conducted within any Unit. Notwithstanding the foregoing, however, Grantee may, in its sole discretion, grant in writing a Unit Owner's written request for a temporary license to use certain Nonexclusive Public Stalls for employee parking during certain Public Use Times.

All users of the Public Stalls shall pay the same Parking Fees. The Condominium Association (or its replacement as the manager of the Parking Structure under the Condominium Declaration and/or the Master Parking Agreement), in consultation with Grantee, shall take such steps as may be reasonably available to prevent and/or to penalize unauthorized use of the Nonexclusive Public Stalls; provided that if notwithstanding such steps Grantee reasonably suspects a pattern of unauthorized use of the Nonexclusive Public Stalls, then Grantee may so inform the Condominium Association in writing and, following at least ten days after the giving of such notice, Grantee may institute Enforcement Methods for its own benefit which are reasonably designed to cause offenders to avoid, remedy and/or cease unauthorized use of the Nonexclusive Public Stalls. Grantee's use of Enforcement Methods as to the Nonexclusive Public Stalls shall be undertaken in a phased manner proceeding from least to most severe only as reasonably deemed necessary by Grantee, in consultation with the Condominium Association, to accomplish Grantee's goal of eliminating unauthorized use of the Nonexclusive Public Stalls.

The Public Stalls shall not be considered to be available to meet the parking needs of any Unit(s) of the Condominium Project, or of any other portions of the Project, when analyzing the availability of adequate parking to meet City's requirements in connection with any land use application concerning such other Unit(s) or portion. To further reduce the possibility of non-public use of the Public Stalls by employees of the Office Unit, there shall be no uses or leases of the Office Unit requiring, in the aggregate taking into account all such uses and leases, use or allocation of over four and one-half (4.5) Parking Stalls per 1,000 square feet of leasable floor area, measured under applicable City parking standards.

The Condominium Association shall cause the Hotel Unit and the Office Unit to adopt and consistently follow policies and procedures whereby the owners, tenants, occupants, customers, guests and invitees of those Units regularly are given clear instructions on when and where to park in the Parking Structure in a manner that will not impair the public's rights to exclusive use of the

80 Exclusive Public Stalls at all times or of the Nonexclusive Public Stalls during the Public Use Times. The Condominium Association may also develop, adopt and consistently follow policies and procedures whereby the public is regularly given clear instructions on when and where to park in the Parking Structure in a manner that will not impair the rights of the Unit owners to utilize the Parking Stalls that are not Public Stalls hereunder or at times other than the Public Use Times at the time set forth in the Shared Parking Plan.

(b) Ingress, Egress and Travel. A non-exclusive easement from Canyon Centre Parkway across the Project Area to the Parking Structure, and within the Parking Structure, for ingress and egress, and pedestrian and vehicular travel, associated with public use of the Public Stalls hereunder.

Section 2. Parking Management Committee. If the Condominium Association creates any committee, board or other body under the Master Parking Agreement, under the Condominium Declaration, or otherwise, for the purpose of managing the Parking Structure (the "Parking Management Committee"), Agency or its designee shall permanently have a voting membership seat on such body. If the Condominium Association does not delegate such management function to a Parking Management Committee, then Agency or its designee shall be entitled to receive prior notice of, and the right to attend and give input in, all Condominium Association meetings where operation of the Parking Structure and the public use thereof is to be discussed.

Section 3. Public Parking Fees. The fees for public parking in the Parking Structure shall be set from time to time by the Condominium Association or the Parking Management Committee, as applicable, in a manner that promotes, rather than discourages, public parking in the Parking Structure and in an amount that results in income from the Public Stalls in an amount sufficient to pay up to 20% of "Parking Assessments" pursuant to and as defined in the Master Parking Agreement. Notwithstanding the foregoing, the fees charged for public use of any Public Stall may not at any time exceed the lesser of (a) the average fee for public parking in three comparable parking structures outside the central business district (i.e., 400 West to 200 East, inclusive, between North Temple and 600 South, inclusive) of downtown Salt Lake City, as reasonably designated by Agency, or (b) 75% of the average fee for public parking in three comparable parking structures within the central business district of downtown Salt Lake City, as reasonably designated by Agency, or (c) \$1.50 per hour, adjusted for any changes in the Consumer Price Index between the date of this Agreement and the date of the proposed adjustment to such public parking fees. As used herein, "Consumer Price Index" shall mean the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics, U.S. City Average, All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982-84=100). Should the Bureau of Labor Statistics discontinue the publication of said index, or publish the same less frequently, or alter the same in some other manner, then the Agency shall use as a reference a substitute index or substitute procedure which reasonably reflects and monitors consumer prices. Further, if the base year "(1982-84=100)" or other base year used in computing the Consumer Price Index is changed, the figures used in making the rental adjustments required herein shall be changed accordingly so that all increases in the Consumer Price Index are taken into account notwithstanding any such change in the base year. The designation of "comparable parking structures" pursuant to (a) and (b) above will be subject to the prior notice to and input from the Condominium Association. The provisions of this Section 3 shall not impair Grantee's right to employ Enforcement Methods and to retain the proceeds thereof as provided in Section 1 of this Agreement.

Section 4. **Maintenance, Repair and Replacement.** The Condominium Association perpetually shall, or shall cause, the Parking Structure to be maintained in a good, attractive and usable condition for the benefit of, *inter alia*, Grantee and the public in their ownership, use and enjoyment of the Public Easements under this Agreement. Neither Agency, County nor the public shall have any maintenance, repair or replacement obligations concerning the Parking Structure notwithstanding their ownership, use and enjoyment of the Public Easements, the Parties acknowledging that the Purchase Price (including issuance of the Private Bond) is fair and adequate consideration for, *inter alia*, exculpation of Grantee from any and all responsibility for the future costs of maintaining, repairing or replacing the Parking Structure. Instead, all short-term and long-term maintenance, repair and replacement of the Parking Structure shall be the responsibility of or otherwise assured by the Condominium Association, and shall be governed by the Condominium Declaration and/or the Master Parking Agreement which will impose on the Condominium Association or the Unit Owners **all** costs and expenses of maintenance, repair and replacement of the Parking Structure; provided, however, that the portion of the Tax Increment that is specifically designated in the "Distribution Chart" attached to the Development Agreement for use in operation and maintenance of the Parking Structure shall be available to defray those costs and expenses and further provided that, except for monies derived from Grantee's use of Enforcement Methods as provided above (which shall belong to Grantee), all parking fees received from use of the Public Stalls shall be received by the Condominium Association and used in connection with such costs and expenses.

Section 5. **Duration.** The Public Easements granted herein shall be perpetual in duration.

Section 6. **Covenants Run with Land.** The Public Easements shall (a) create an equitable servitude on the Project, including Lot 2 and the Parking Structure, in favor of Grantee; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Project at any time or from time to time; and (d) inure to the benefit of and be binding upon the Parties and their respective successors and their assigns.

Section 7. **Assignment.** Each of Agency and County freely may assign its rights and/or delegate its duties under this Agreement to other governmental entities acting on behalf of the general public, including an interlocal entity such as a public parking authority or agency. The assignor shall notify the other Parties in writing of any such assignment/delegation. No such assignment/delegation shall relieve the Assignor of the responsibility to ultimately assure full and timely performance of its obligations hereunder.

Section 8. **Default and Remedies.** In the event of any breach of this Agreement by a Party, the non-breaching Party may give the breaching Party written notice describing the breach and ten days in which to cure. Should the breaching Party fail to cure such breach within the ten day cure period, the non-breaching Party may pursue any and all the remedies available to it at law or in equity, including specific performance.

Section 9. **Recordation.** This Agreement shall be recorded in the office of the Salt Lake County Recorder before any transfer of a Unit from Grantor or, if none has by then occurred, upon completion of construction of the Parking Structure, as provided in the Development Agreement.

Section 10. **Estoppel Certificate.** Within ten business days after request, each party shall furnish to the other party, for use by such party and/or potential buyers, lenders, and tenants,

a statement describing any alleged breaches of this Agreement, or if none, so stating, and such other matters relating to this Agreement as may be reasonably requested.

Section 11. **General Provisions.** The following provisions are also integral parts of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Parties.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provision of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) **Amendment.** This Agreement may not be materially modified except by an instrument in writing signed by the Parties, the Condominium Association, the owner of the Hotel Unit and the owner of the Office Unit.

(g) **Time of Essence.** Time is the essence in this Agreement.

(h) **Interpretation; Venue.** This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah. In any action brought to enforce the terms of this Agreement, the Parties agree that the appropriate venue is the Third Judicial District Court in and for Salt Lake County, Utah.

(i) **Notices.** Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received:

(i) Upon personal delivery or actual receipt thereof; or

(ii) Within three (3) days after such notice is deposited in the United States mail, certified mail postage prepaid and addressed to the parties at their respective addresses specified above or any substitute or additional address(es) previously specified by a Party to the other Parties by written notice.

(j) **Exhibits and Recitals.** The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of the Agreement.

(k) Governmental Immunity. Agency and County are governmental entities under the Governmental Immunity Act, UTAH CODE ANN. Section 63G-7-101 *et. seq.* (the "Immunity Act"). Consistent with the terms of the Immunity Act, the Parties agree that each Grantee is responsible and liable for the wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither Grantee waives any defenses or limits of liability otherwise available under the Immunity Act and all other applicable law, and each Grantee maintains all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.

(l) Attorney's Fees. In the event any action or proceeding is taken or brought by a Party against another Party concerning this Agreement, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

DATED effective 24 December 2018.

GRANTOR:

CANYON CENTRE CAPITAL, LLC,
a Utah limited liability company

By: **C.W. MANAGEMENT CORPORATION,**
a Utah corporation, its Manager

By: _____
Chris McCandless, President

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

On this ___ day of December 2018, personally appeared before me **Chris McCandless**, who duly acknowledged to me that he signed the foregoing agreement as the President of **C.W. Management Corporation**, a Utah corporation acting in its capacity as the manager of **Canyon Centre Capital, LLC**.

Notary Public

CONDOMINIUM ASSOCIATION:

THE CANYON CENTRE CONDOMINIUM ASSOCIATION, a Utah non-profit corporation

By: _____
Christopher K. McCandless, President

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

On this ___ day of December 2018, personally appeared before me **Christopher K. McCandless**, who duly acknowledged to me that he signed the foregoing agreement as the President of **THE CANYON CENTRE CONDOMINIUM ASSOCIATION**, a Utah non-profit corporation.

Notary Public

GRANTEE:

AGENCY:

ATTEST:

COTTONWOOD HEIGHTS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY

By: _____
Paula Melgar, Secretary

By: _____
B. Tim Tingey, CEO

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

On this 21st day of December 2018, personally appeared before me **B. Tim Tingey** and **Paula Melgar**, who duly acknowledged to me that they signed the foregoing agreement as the CEO and the Secretary, respectively, of the **Cottonwood Heights Community Development and Renewal Agency**.

Notary Public

COUNTY:

SALT LAKE COUNTY

By: _____
Mayor or Designee

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

On this ____ day of December 2018, personally appeared before me _____, who being duly sworn, did say that (s)he is the _____ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of **Salt Lake County** by authority of law.

Notary Public

ATTACHMENT NO. 1

(Legal Descriptions of the Project Area, Lot 2 and the Parking Structure)

PROJECT AREA:

CANYON CENTRE Amending Wasatch Gates Subdivision, according to the official plat recorded on April 8, 2015 as Entry No. 12026637, in Book 2015P of Plats, at Page 83 of the official records of the Salt Lake County Recorder.

Tax Parcel Nos. 22-25-176-022; 22-25-176-023; 22-25-176-024; 22-25-180-001; and 22-25-180-003 through 22-25-180-019 inclusive.

LOT 2:

Lot 2, **CANYON CENTRE Amending Wasatch Gates Subdivision**, according to the official plat recorded on April 8, 2015 as Entry No. 12026637, in Book 2015P of Plats, at Page 83 of the official records of the Salt Lake County Recorder.

Tax Parcel No. 22-25-176-023

PARKING STRUCTURE:

The three-level "underground" parking structure containing approximately 415 total stalls which is located on Lot 2 of the **CANYON CENTRE Amending Wasatch Gates Subdivision**, according to the official plat recorded on April 8, 2015 as Entry No. 12026637, in Book 2015P of Plats, at Page 83 of the official records of the Salt Lake County Recorder, with said Lot 2 constituting Tax Parcel No. 22-25-176-023.

Such parking structure is designated as Unit 2B-1 (also known as Parking Level 1 or P1), Unit 2A-2 (also known as Parking Level 2 or P2), and Unit 2B-3 (also known as Parking Level 3 or P3) of the **CANYON CENTRE CONDOMINIUMS (AMENDING LOT 2 OF CANYON CENTRE)** according to the official plat thereof now or hereafter on file and of record in the office of the Recorder of Salt Lake County, Utah.

ATTACHMENT NO. 2

(Attach Shared Parking Plan)