

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

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "Declaration"), is made as of the 31st day of May 2018, by Cache Valley Realty LLC, a Utah limited liability company, Cache CH LLC, a Utah limited liability company and Cache Nassim LLC, a Utah limited liability company (collectively "Declarant");

W I T N E S S E T H :

WHEREAS, Declarant is the owner of a tract of land (the "Land") known as the Cache Valley Mall located at 1136, 1220 and 1300 North Main Street, 170 East Cache Valley Boulevard and 1175 North 200 East, in the City of Logan, County of Cache, State of Utah, as more particularly described in Exhibit A attached hereto and depicted on Exhibit B attached hereto (the "Site Plan"); and

WHEREAS, Declarant desires to create certain easements, covenants, conditions and restrictions encumbering the Land and binding on and inuring to the benefit of Declarant, Declarant's tenants and their respective successors and assigns; and

NOW, THEREFORE, Declarant hereby declares, agrees, covenants and consents that the Land and all parts thereof shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Land and all parts thereof, and be binding on all parties having any right, title or interest in the Land or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each party having any right, title and interest therein which is hereby acknowledged as good and valuable consideration, the Declarant agrees as follows:

ARTICLE I

**APPLICATION OF EXISTING AGREEMENTS**

Declarant acknowledges and agrees that this Declaration is subject and subordinate to the provisions of all documents pertaining to the Land that are legally binding and enforceable as of the date of execution of this Declaration, including, but not limited to, all documents of record and all leases of tenants who are in good standing and in compliance with the terms of their leases

as of the date of execution of this Declaration, for so long as the said documents are legally binding and enforceable and have not expired by their own terms (e.g. expiration of a lease term) or by operation of law. In the event there is a conflict between any provision of this Declaration and any lease executed by the Declarant, the terms and provisions of such lease shall prevail.

## ARTICLE II

### BASIC DEFINITIONS

Section 2.1 "Common Area" shall mean the service drives, parking areas, Access Roads (as hereinafter defined in Section 3.2), retention ponds, entrances and exits of the Mall (as hereinafter defined in Section 2.2), and all other areas that may be provided for the general use in common of the tenants of the Mall and their respective officers, agents, employees, customers, and invitees.

Section 2.2 "Mall" shall mean and refer collectively to the complex of retail Buildings (as hereinafter defined in Section 3.1(c)) and related improvements constructed and existing from time to time on all of the Parcels (as hereinafter defined in Section 2.4) forming part of the Land.

Section 2.3 "Outparcel" shall mean and refer to any Parcel that is in the lawful possession of a single tenant. Any Parcel that is both owned in fee and occupied by a single Party shall not be an Outparcel.

Section 2.4 "Parcel" shall mean and refer to any portion of the Land that has been subdivided from the rest of the Land as a separate legal parcel. Unless otherwise indicated, the term "Parcel" shall include Outparcels.

Section 2.5 "Party" shall initially mean and refer to the Declarant. There shall be one Party for each Parcel forming part of the Land, which is currently owned in its entirety by the Declarant. In the event that a Parcel is transferred to a third party unrelated to Declarant (each, an "Owner"), said Owner shall become a Party with respect to its Parcel.

## ARTICLE III

### EASEMENTS

Section 3.1 Definitions and Documentation. For the purposes of this Article III, the following will apply:

(a) A Party granting an easement burdening its Parcel is called a "Grantor" with respect to such easement, it being intended that the grant shall thereby bind and include not only such Grantor but also its successors and assigns.

(b) A Party to whom an easement is granted with respect to another Parcel is called a "Grantee" with respect to such easement, it being intended that the grant shall benefit and include not only such Party but its successors, assigns, occupants and permittees; although no such easement shall be for the direct benefit of permittees, a Grantee may permit from time to time the occupants and permittees of its Parcel to use such easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

(c) The term "Building(s)" means any permanently enclosed structure(s) which has (have) been, will be or may be placed, constructed or located on a Parcel within a Permissible Building Area (as that term is hereinafter defined in Section 3.1(h)), which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, covered garden areas, truck ramps and other outward extensions, but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 3.1(d)).

(d) The term "Common Area Improvements" means all improvements which will be or may be constructed on a Parcel under the terms of this Declaration within the Common Areas of the Mall, being those areas designated on the Site Plan for the common enjoyment and use of all Owners, their successors, assigns, tenants, occupants and permittees such as parking areas, access and egress drives, service drives, lighting standards, sidewalks, and all other improvements which would be part of the "Common Area" under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign or reconfiguration of the same shall be undertaken by the Owner of the Parcel on which the Common Area Improvements are located, subject to the terms, conditions and provisions of this Declaration.

(e) The term "Common Utility Facilities" means utility systems and facilities from time to time situated on and serving the Land, up to the building wall of any Building, for use or service in common by more than one Parcel or for the service of the Common Area, such as the following: storm drainage, retention and disposal facilities and sanitary sewer

systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this Declaration and as replacements thereto.

(f) The term "Improvement(s)" collectively means the Building(s) and the Common Area Improvements.

(g) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and "under", or any one or more of the foregoing.

(h) The term "Permissible Building Area", means an area on any Parcel designated as such on the Site Plan within which only a single Building or related structure of a certain size and height may be constructed as hereinafter more fully provided. No such Building or structure (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area.

(i) The term "Separate Utility Facilities" means any of the following not intended under the terms of this Declaration for use in common by more than one Parcel nor for service of the Common Area: storm drainage facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems, underground natural gas systems, underground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvement situated on any Parcel.

(j) All easements granted herein are non-exclusive and are irrevocable and perpetual.

(k) All easements granted herein shall be easements appurtenant and not easements in gross.

(l) In the event a Party lawfully subdivides and assigns, transfers or conveys a portion of its Parcel in accordance with the terms of this Declaration, those easements granted under this Article III which benefit, bind, and burden the remainder of the

Parcel not transferred or conveyed shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article III which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part.

(m) All easements granted hereunder and herein shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Parties will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case maybe, of any easement, if the form and substance of the document is approved by the other Parties. No grant of an easement pursuant to this Article III shall impose any greater obligation on any Party to construct or maintain its Building(s) except as expressly provided in this Declaration.

Section 3.2 Easements for Access Roads. Declarant hereby establishes for the benefit of the Land non-specific easements for pedestrian and vehicular traffic for the purpose of providing ingress to and egress from the public ways to and throughout the Mall (“Access Roads”), together with the following rights and subject to the following restrictions and reservations:

(a) The use of the Access Road easements by any person entitled to the use thereof shall be in common with all other such persons;

(b) No person entitled to use the Access Road easement shall obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the Access Roads, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein; and

(c) The Access Roads (including internal drive lanes) shown on the Site Plan may be relocated by the Declarant at any time so long as the relocated Access Roads afford reasonably equivalent access.

Section 3.3 Easements for Utility Facilities. Declarant hereby establishes for the benefit of the Land perpetual easements on the Outparcels, except within the Permissible Building

Area, as shown on the Site Plan, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Land.

All Separate Utility Facilities installed in an Outparcel, whether installed under this Section 3.3 or otherwise, and all Common Utility Facilities, shall be underground, if reasonably possible.

Declarant shall be responsible for the installation, maintenance, repair and removal at Declarant's cost of all Separate Utility Facilities installed by Declarant on the Land pursuant to the easements granted pursuant to this Section 3.3. All such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to any Parcel not then owned by Declarant as may be practicable under the circumstances and any and all portions of the surface area of any such Parcel(s) which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of Declarant, to substantially the same condition as existed prior to the commencement of any such work.

Declarant shall defend, indemnify and hold the Grantor of any easement hereunder harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with Declarant's use of the Separate Utility Facilities easements granted pursuant to this Section 3.3, except to the extent occasioned by such Grantor's negligent, intentional or wrongful act or omission to act.

Section 3.4 Self-Help Easements. Declarant reserves unto itself an easement and license to enter upon any Parcel or Outparcel for the purpose of exercising its cure rights provided under Article VI of this Declaration.

Section 3.5 Easements to Public Utilities. Any grant or other conveyance of an easement to a public utility by an Owner other than the Declarant shall, without necessity of further recital in the conveyancing instrument, be deemed to include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for manhole and manhole covers which shall be flush with adjacent grade, and except as otherwise shown on plans approved by the Declarants;

(c) The grantor retains the right to use the surface areas pursuant to the other terms and provisions of this Declaration;

(d) The grantee shall not, in its use or installation, interfere with other installations and easements in the area;

(e) The grantee shall protect its facilities against uses of the surface made by the other Parties;

(f) The grantee shall make adequate provisions for the safety and convenience of all persons using the area;

(g) The grantee, following installation or other work, shall replace and restore the areas and improvements to the condition in which they were immediately prior to performance of such installation and work;

(h) The grantee shall defend, indemnify and hold harmless the other Parties against all loss, liability, and costs (including reasonable attorney's fees) which may result to the Grantor from the negligent, intentional or wrongful act or omission of its agents, employees and contractors; and

(i) The grantee shall not permit any claim, lien or encumbrance to attach against the Property or any interest therein.

Notwithstanding the foregoing, development on all parcels shall comply with all applicable laws, rules, regulations, and ordinances (including, but not limited to, any zoning code or building code).

#### ARTICLE IV

##### USE

Section 4.1 General Use Requirement. Any Parcel not owned by Declarant shall be used only for financial institutions, service establishments, offices of the type customarily found in first-class regional shopping centers, retail stores selling retail merchandise normally carried in other first-class regional shopping centers, and restaurants with table service that earn over sixty (60%) percent of their respective gross revenues from food sales.

Section 4.2 Nuisances. Subject to the provisions of Section 4.1, any Parcel not owned by the Declarant shall not be used for anything other than purposes which may be permitted by applicable zoning regulations, nor shall anything be done on any Parcel not owned by the Declarant which shall constitute a public nuisance to the community including, but not limited to: any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness; any

obnoxious odor; any noxious, toxic, caustic or corrosive fuel or gas; any dust, dirt, or fly ash in excessive quantities; or any unusual fire, explosion or other damaging or dangerous hazard, including, the storage, display or sale of explosives or fireworks.

Section 4.3 Use Restrictions on Any Parcel Not Owned by the Declarant. During the term of this Declaration no portion of any Parcel not owned by the Declarant may be used for any of the following purposes without the written consent of the Declarant:

- (a) A health club, gymnasium or spa.
- (b) A training or educational facility (including without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than customers).
- (c) A medical clinic or office.
- (d) An establishment for sale, leasing, display or repair of automobiles, trucks, mobile homes or recreational motor vehicles.
- (e) A child day care facility.
- (f) Governmental offices.
- (g) An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts).
- (h) A hotel or motel, any living quarters, sleeping apartments or lodging rooms;
- (i) A theater (motion picture or live performance).
- (j) A massage parlor.
- (k) A skating rink.
- (l) A mortuary, crematorium or funeral home.
- (m) A mobile home or trailer court, labor camp, junkyard or stockyard.
- (n) A land fill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage.
- (o) A telephone call center.



(p) A gambling establishment, bingo parlor or betting parlor.

(q) Veterinary hospital or animal raising or keeping facilities;

provided, however, the foregoing shall not prohibit the operation of a retail store providing goods and services to pets, such as Petco, PetSmart or the like.

(r) Assembling, manufacturing, industrial, distilling, refining or smelting facility.

(s) Any agricultural operation.

(t) A tavern, bar, nightclub, cocktail lounge, discotheque, dance hall, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than forty (40%) percent of the restaurant's gross revenues.

(u) A bowling alley, billiard parlor, bingo parlor, arcade, game room or other amusement center.

(v) A gas station, service station, automotive repair shop or truck stop; except an automobile service center of the same type which Firestone, Goodyear or the like operate as of the date hereof.

(w) A flea market or pawn shop.

(x) A car wash.

(y) A dry cleaning plant, central laundry or laundromat.

(z) Any drilling for, in or removal of subsurface substances.

(aa) Outdoor circuses, outdoor public meetings.

(bb) Any "second hand" store, Army, Navy or government surplus store.

(cc) Any warehouse (any area for the storage of goods intended to be sold at any retail establishment in the Mall shall not be deemed a warehouse).

(dd) Any fire sale, bankruptcy sale (except pursuant to court order) or auction.

(ee) Any use similar to that of a current tenant of the Mall that is in good standing.

(ff) Any use that may compete with a current tenant of the Mall that is in good standing.

(gg) Any use that violates an exclusive provision of a current tenant of the Mall.

## ARTICLE V

### PERMITTING, GENERAL CONSTRUCTION & DEVELOPMENT

Section 5.1 Preliminary Approvals. No Buildings or related improvements shall be erected or allowed to remain on any portion of any Parcel not owned by the Declarant unless the plans and specifications therefor have been approved by the Declarant. A complete set of proposed construction plans including site, foundation and floor plans and elevation drawings of all sides shall be presented to and approved in writing by the Declarant prior to commencing construction of a Building of any kind on any Parcel not owned by the Declarant, which approval shall not be unreasonably withheld, conditioned or delayed. Declarant shall grant or withhold its approval within thirty (30) days after delivery of written request therefor. If Declarant fails to respond within such thirty (30) day period, the Party requesting approval shall have the right to send a second request for approval, indicating in bold, capital type at the top of the request, that approval will be deemed granted if not withheld in writing within ten (10) days after delivery, and if Declarant fails to respond to such second notice within ten (10) days after delivery thereof, Declarant's approval shall be deemed granted. Upon completion of the Building foundation, an actual field survey of the foundation shall be presented to the Declarant to ensure that it has been constructed in accordance with the approved site plan. All Buildings and related improvements shall comply with the plans as presented to and approved by the Declarant unless changes are approved in writing by the Declarant. The right to make inspections necessary to assure compliance is reserved to the Declarant. Weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety (90) days after the Building is occupied. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year.

Section 5.2 Improvement Plans. Prior to construction of any Building or other improvements on any portion of any Parcel not owned by the Declarant, architectural renderings describing the exterior elevations of the building and materials to be used for such construction must be submitted to Declarant for its approval, to the extent such approval is required pursuant to the terms of Section 5.1 above, which approval shall not be unreasonably withheld.

Section 5.3 Parking Requirements. Any Parcel not owned by the Declarant shall be self-supporting with respect to parking and shall each contain not less than 5.0 paved full size automobile parking spaces for each 1,000 square feet of building floor area constructed thereon, or the number of parking spaces required by applicable law, whichever is lesser. In each case the parking lanes or bays (which includes two rows of parking spaces and incidental driveway) shall have either (i) a minimum width of 63 feet and each parking space shall be at an angle of 90 degrees and shall have a minimum width of 9 feet on center measured at a right angle to the side line of the parking space or (ii) a minimum width of 55 feet and each parking space shall be at an angle of 60 degrees and shall have a minimum width of 9 feet on center measured at right angles to the side line of the parking space. Notwithstanding the foregoing, development on all parcels shall comply with all applicable laws, rules, regulations, and ordinances (including, but not limited to, any zoning code or building code).

Section 5.4 Employee Parking Areas. Declarant, from time to time, may designate that particular portions of the Mall parking areas (the "Employee Parking Areas") are to be used by tenants and their respective employees, or other individuals working at or from a Parcel, and, in such event, such employees/individuals shall park their vehicles only in the Employee Parking Areas; provided that all similarly situated tenants are required to have their employees park in such Employee Parking Areas. Owners and/or their respective tenant(s) shall notify each such employee/individual of the provisions of this Section prior to each such employee/individual commencing employment or work at or from the Parcel. If such employees or individuals do not park their vehicles in the Employee Parking Areas as required, Declarant shall give the Owner of the Parcel on which such employees/individuals work written notice of such violation. If such Owner or its tenant does not act to correct such violation within two (2) days after Declarant's written notice of violation is given, Declarant shall have the right to have the violating vehicles towed at the vehicle owner's expense.

Section 5.5 Signage. Subject to Declarant's reasonable approval and Declarant's receipt of any required approval from (a) any store in the Mall having such right of approval and (b) all governmental authorities having jurisdiction, an Owner may permit its tenant(s) to construct signs on a Parcel to advertise the business(es) of such tenants conducted on the Parcel. Each Owner or its tenant(s) shall obtain any governmental consents, approvals and

permits required to allow such tenant(s) to erect such signs, all at no expense to Declarant and subject to the following restrictions.

1. General Specifications.

(a) Painted lettering, symbols or identification of any nature will not be permitted, except as specifically permitted hereunder.

(b) Flashing, blinking, moving, animated or audible signs will not be permitted.

(c) All electrical sign components shall bear the UL label and their installation must comply with all local building and electrical codes.

(d) No exposed wiring, conduits, tubing, lamps, ballast boxes or raceways will be permitted; except that Purchaser may use channelized neon.

(e) All cabinets, conductors, transformers, ballasts, attachment devices, and other equipment shall be concealed.

2. Design Requirements.

(a) The advertising or informative content of all signs shall be limited to letters designating tenant's name and/or type of business of tenant conducts at the Outparcel, and such designation of the business of tenant at the Outparcel will be by general descriptive terms and shall not include any specification of the merchandise offered for sale therein or the services rendered therein except as shown on the approved sign.

(b) The character, design, color and layout of all signs shall be subject to Declarant's approval, which approval shall not be unreasonably withheld to the extent the sign in question complies with the criteria set forth in this paragraph.

(c) No sign or any portion thereof may project above the parapet wall or top of the exterior wall upon which it is mounted.

(d) No rooftop signs will be permitted.

(e) No free standing sign, or sign not attached to a Building may be installed (except traffic directional signage as may be allowed herein); except that in association with a Building, a maximum of one free-standing pylon sign identifying the business of the occupant of the Building shall be permitted on an Outparcel in accordance with the following:

(i) Said pylon sign shall be constructed on a masonry base; exposed structural members or poles to support a sign will not be permitted.

(ii) Maximum height from the bottom of the masonry base to the top of the sign shall not exceed the height of the Building on the Parcel at its highest point; and neither the height nor the width of a sign panel shall exceed eight feet (8'). In no event shall the surface area of the sign panel exceed sixty-four (64') square feet.

(iii) Maximum width of the sign panel shall not exceed ten feet (10').

(iv) Maximum thickness of masonry base and/or sign shall not exceed thirty (30") inches or the thickness required by local governing authorities, whichever is greater.

(f) Anything herein stated to the contrary notwithstanding the size, character, appearance, location, installation and maintenance of all signs to be utilized by tenant must comply with all rules, ordinances, regulations and laws of all appropriate governmental authorities (collectively, "Governmental Requirements").

(g) Any of the restrictions or requirements set forth in this Section 5.5 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by the Declarant.

Notwithstanding the foregoing, development on all Parcels shall comply with all applicable laws, rules, regulations, and ordinances (including, but not limited to, any zoning code or building code).

Section 5.6 Development of Outparcels. Any Outparcel not owned by Declarant shall only be developed under the following guidelines:

- (a) All visible areas of any Building constructed on the Outparcel shall be aesthetically pleasing and utilize one design concept with continuity of materials on all four sides of its building. All Buildings shall be in architectural harmony with the total development of the Mall. The Outparcel shall have decorative screening and/or landscaping in order to obscure from public view all trash rooms, trash holding receptacles, loading or service areas, mechanical or electrical equipment, storage facilities or bins, or other building appurtenances which Declarant may

deem aesthetically undesirable.

- (b) Any Building constructed on an Outparcel shall not exceed 24 feet in height, including any parapet, as measured from the finished elevation of the parking area immediately adjacent to such Building's foundation; provided that a single architectural entrance feature shall be permitted which does not exceed 32 feet in height.
- (c) Any rooftop equipment installed on an Outparcel shall be screened in a manner reasonably satisfactory to the Declarant to insure that all roof-mounted equipment and appurtenances, roof vents, etc., shall not be readily visible to the public.
- (d) No rooftop signs shall be erected on any building constructed on an Outparcel.
- (e) A freestanding identification sign complying with the restrictions and design criteria set forth in Section 5.5, above may be erected on an Outparcel only with the prior written consent of the Declarant, but in no event shall such freestanding identification sign block the visibility of any signage on any Building located on another Parcel or the visibility of any monument sign or pylon sign located on another Parcel. Approvals under this Section shall not be unreasonably withheld. If an Owner or tenant of an Outparcel desires to erect such a freestanding sign, it shall make its request in writing to the Declarant with a copy of the sign plans. The Declarant shall then have thirty (30) days from receipt of the notice to object to the proposed sign. If the Declarant does not object within the thirty (30) day period, then the Owner or tenant requesting approval shall have the right to send a second request for approval, indicating in bold, capital type at the top of the request, that approval will be deemed granted if not withheld in writing within ten (10) days after delivery, and if Declarant fails to respond to such second notice within ten (10) days after delivery thereof, the proposed sign shall be conclusively deemed approved, and the Declarant shall not have the right to any further objection. Notwithstanding the

foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height.

- (f) A minimum distance of five feet shall be maintained from the property line to the edge of the parking curb and pavement situated on an Outparcel as a landscaped buffer strip. No above ground improvements of any type (except for low silhouette landscaping) shall be permitted within said buffer area. The final landscaping plans for this buffer and all other landscaped areas shall be subject to Declarant's written approval which shall not be unreasonably withheld.
- (g) Concrete curbs and gutters shall be maintained on all Outparcels in the following locations: (i) along the entire perimeter of the Outparcel at the edge of the pavement separating the parking area from the adjacent landscaped buffer, except portions situated within curb-cuts; (ii) on both sides of the landscaped buffer in areas where the buffer separates the Outparcel from the Mall peripheral cruising lane and/or adjacent roadways; and (iii) at all vehicular entrances to the Outparcel from the peripheral cruising lane of the Mall, adjacent public roadways or contiguous Outparcels. In each instance, said curbs and gutters shall be full depth (12") poured-in-place concrete type curbs; with no precast or asphaltic curbs and gutters permitted.
- (h) All Outparcels shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.
- (i) Owner and/or any tenant shall repair any damage caused to any of the utility facilities, as described in Section 3.3 of this Declaration, serving the Mall which is caused by tenant and/or Owner.
- (j) Any of the restrictions or requirements set forth in this Section 5.6 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by the Declarant.
- (k) The foregoing restrictions and agreements are imposed on each of the

Outparcels for the benefit of the entire Mall. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Outparcels and any person who may from time to time own, lease, or otherwise have an interest in any of the Outparcels.

Notwithstanding the foregoing, development on all parcels shall comply with all applicable laws, rules, regulations, and ordinances (including, but not limited to, any zoning code or building code).

Section 5.7 Performance of Construction Work Generally. All construction, alteration or repair work undertaken on any Parcel shall be accomplished in an expeditious, diligent and speedy manner. The person or entity undertaking such work shall: (i) pay all costs and expenses associated with such work; (ii) take necessary measures to minimize disruption and inconvenience caused by such work; (iii) make adequate provisions for the safety and convenience of the Mall and its other occupants; (iv) control dust, noise and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area; (v) repair any and all damage which may be caused by or result from such work; (vi) restore all affected portions of any Parcel to a condition equal to or better than the condition existing prior to beginning such work; (vii) indemnify and hold harmless all other Parties against any mechanics liens for such work. Such construction shall not (a) unreasonably interfere with the business operations on any other Parcel, (b) block or impede the Mall ingress or egress from public streets, (c) adversely affect the availability of parking and/or circulation of traffic on any other Parcel, or (d) interrupt the utility service on any other Parcel. The Party performing such work shall limit all construction work and staging areas to its own Parcel and not encroach on any Common Areas on any other Parcel, including the parking areas on any other Parcel.

Section 5.8 Compliance in Construction. All construction, alteration or repair work undertaken pursuant to this Declaration shall comply with the approved plans and specifications therefor, all applicable Governmental Requirements, requirements of other entities (such as public utilities) having jurisdiction, and the procurement of all license and permits required for such work. Declarant's approval of any such work, or the plans and specifications therefor,



under any provisions of this Declaration shall not constitute Declarant's assumption of responsibility for the accuracy, sufficiency or propriety of such work, or of such plans and specifications, nor shall constitute a representation or warranty that such work or plans and specifications call for construction of economic improvements or improvements which comply with law.

Section 5.9 Construction Insurance. Prior to commencing any construction activities within an Outparcel, each Owner or its tenant shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

(a) Worker's Compensation and Employer's Liability Insurance.

- (i) Worker's compensation insurance as required by any applicable law or regulation.
- (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury, and \$2,000,000 each employee for bodily injury by disease.

(b) General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:

(i) Required Coverages:

- (A) Premises and Operations;
- (B) Products and Completed Operations;
- (C) Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
- (D) Broad Form Property Damage (including Completed Operations);
- (E) Explosion, Collapse, and Underground Hazards;
- (F) Personal Injury Liability:
  - (1) \$3,000,000 each occurrence for Personal Injury Liability;
  - (2) \$5,000,000 aggregate for Products and Completed

Operations (which shall be maintained for a three year period following final completion of the work);

(3) \$5,000,000 general aggregate.

(c) Automobile Liability Insurance. Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

(d) Umbrella/Excess Liability Insurance The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.

## ARTICLE VI

### MAINTENANCE, TAXES AND INSURANCE

Section 6.1 Maintenance. Each Owner or its tenant shall maintain its Parcel and the Building(s) on its Parcel in good order and condition. In accordance with the provisions of Article VIII, below, Declarant shall maintain all Access Roads in good order and condition and state of repair in accordance with the standards of good shopping center operation including (but not limited to) sweeping and removal of trash, litter and refuse, repair and replacement of paving as necessary and removal of ice and snow. Each Owner covenants that it or its tenant(s), in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its Building(s) clean; will maintain its Building(s) at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash, rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed.

The maintenance and repair of the Building and related improvements on each Outparcel shall be of such a character that their appearance will be that of a unified, first-class regional shopping center.

The cost of all maintenance and repair activities undertaken by the Declarant, together with a management fee not to exceed five percent (5%) of the amount of the reasonable maintenance and repair costs incurred by Declarant in fulfilling its obligations enumerated above, shall be prorated among the Owners of the Parcels based upon the proportional share of gross leasable area of the Building(s) on each Party's Parcel, as determined, from time to time, in accordance with the provisions set forth below. Such costs shall not include (A) bad debt expenses and interest, principal, points and fees on debts; (B) costs incurred by Declarant to the extent that Declarant is reimbursed by insurance proceeds or is otherwise reimbursed; (C) salaries and other benefits paid to the off-site employees of Declarant to the extent customarily included in or covered by a management fee, provided that in no event shall such costs include salaries and/or benefits attributable to personnel above the level of the site manager; (D) rent for any office space occupied by management personnel to the extent the size or rental rate for of such office space exceeds the size or fair market rental value of office space occupied by management personnel of comparable first-class regional shopping centers with similar responsibilities in the vicinity of the Mall; (E) amounts paid to subsidiaries or affiliates of Declarant for goods and/or services to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis; and (F) Declarant's general corporate overhead and general and administrative expenses.

Each Owner shall pay its proportional share of all such costs and fees within thirty (30) days following its receipt of a detailed invoice therefor together with evidence substantiating such costs and fees to such Owner's reasonable satisfaction. However, Declarant may, at its discretion, make from time to time a reasonable estimate of the costs and fees which may become due for any year, and require an Owner to pay to the Declarant the Owner's proportional share of such costs and fees in equal monthly installments. In such event, the Declarant shall cause the actual amount of the Owner's proportional share of such costs and fees to be calculated within ninety (90) days following the end of each calendar year and shall deliver its calculation of such costs and fees together with evidence substantiating such costs and fees to the Owner's reasonable satisfaction, and the Declarant shall within thirty (30) days thereafter pay to the other the amount of any deficiency or overpayment, whichever the case may be. The Owner's proportional share shall be determined by multiplying the total of all such costs and fees

by a fraction, the numerator of which shall be the gross leasable area (“GLA”) of the Building(s) located on the Owner’s Parcel, and the denominator of which shall be the sum of the GLA of all Buildings located on all Parcels.

Declarant may appoint a third party as its agent to maintain and repair the Common Areas in the manner outlined above. Said agent may receive for such agency a commercially reasonable fee to cover supervision, management, accounting and similar services; provided, however, that in the event Declarant appoints such a third party to maintain and repair the Common Areas in its stead, Declarant shall not receive the management fee to which it is otherwise entitled hereunder with respect to all services provided by such third party.

If any Owner’s payment is not timely paid as provided above, the overdue amount shall earn interest at the Default Rate commencing as of thirty (30) days after the due date. If the Owner of a Parcel fails to pay Declarant all amounts due, including interest accrued, by the later of (a) ninety (90) days after the payment due date or (b) thirty (30) days after notice from Declarant of an intent to file a lien, the Declarant shall thereafter have the right to place a lien on such Owner’s Parcel. In the event that a breach of this Declaration results in litigation, the non-prevailing party(ies) shall pay the reasonable and customary attorneys’ fees and costs of the prevailing party(ies), which shall include the fees and costs of a single appeal of any judgment entered at trial. For purposes of this provision, “prevailing party” shall include a party that obtains dismissal of any complaint against it and a party that obtains by settlement substantially the relief sought by it in any such proceeding.

Section 6.2 Damage and Destruction. In the event any Building, structure or other related improvement on an Outparcel shall be damaged or destroyed by fire or other casualty, the Owner of the Outparcel shall, within forty-five (45) days after the date of such damage or destruction, either (a) commence to repair and/or reconstruct such improvements to the condition required by this Declaration, and thereafter diligently pursue the same to completion; or (b) level such Building and/or improvement, remove the debris from the Outparcel and thereafter keep the Outparcel neat, orderly, planted in grass and mowed/trimmed until subsequently improved, constructed upon and operated.

Section 6.3 Default in Maintenance Responsibilities. In the event that a Party fails in its maintenance obligations as set forth in Section 6.1 related to an Outparcel, which failure

continues for a period of thirty (30) days (ten [10] business days in the event of a failure to pay money) after receipt of written notice thereof specifying the particulars of such failure, such failure shall constitute a default under the Declaration and Declarant may thereafter perform such maintenance obligations for the account of the defaulting Party and at the defaulting Party's sole cost and expense, in addition to Declarant's other remedies hereunder, at law or in equity.

Section 6.4 Taxes. The Owner of each Parcel shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against such Parcel. In the event an Owner or its tenant fails to pay when due all taxes and assessments described herein, which failure continues for a period of ten (10) days after written notice thereof, such failure shall constitute a default under this Declaration and the Declarant may, in addition to Declarant's other remedies hereunder, at law or in equity, thereafter pay such taxes if such taxes are delinquent and the Owner of such Parcel has not commenced and is not duly prosecuting any contest of such taxes. The Declarant shall then bill the defaulting Party for the expenses incurred by Declarant. The defaulting Party shall have ten (10) business days within which to pay the bill. If the defaulting Party does not so pay, the Declarant shall have the right to place a lien on the Parcel of the defaulting Party for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said ten (10) business day period until paid.

Section 6.5 Insurance; Indemnification; Waiver of Subrogation. Each Party will at all times maintain or cause to be maintained with respect to its Parcel and all Buildings and related improvements thereon: (i) commercial property insurance against loss or damage by fire, lighting and other risks customarily covered by an all-risks policy of property insurance for the full replacement cost of the Building(s) and related improvements located thereon and (ii) commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Party's Parcel combined single limit coverage of not less than THREE MILLION DOLLARS (\$3,000,000.00) per occurrence. Nothing herein shall prevent any Party having a net worth of at least Fifty Million Dollars (\$50,000,000) from meeting the obligations of this Section 6.5 by means of a consistent, uniform program of self-insurance covering all its properties and /or operations.

To the extent not covered by the insurance policies described above, each Owner of a Parcel not owned by Declarant (the "Indemnitor") will pay, and indemnify and save harmless the Declarant, its officers, employees, directors/trustees, tenants, licensees, invitees, customers, agents and contractors (collectively, the "Indemnitees") from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property occurring on the Indemnitor's Parcel; (ii) any use or condition of the Indemnitor's Parcel; and (iii) any negligent or tortious acts of the Indemnitor or any of its tenants, licensees, invitees, customers, agents or employees.

## ARTICLE VII

### DEFAULT; REMEDIES

Section 7.1 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Party (the "Defaulting Party"):

- (a) The failure to perform any obligation of Article VI hereof within the time requirements cited therein;
- (b) The failure to make any payment required to be made hereunder within ten (10) business days of the due date, or
- (c) The failure to observe or perform any other of the covenants, conditions or obligations of this Declaration or to abide by the restrictions and requirements herein provided, other than as described in (a) above, within thirty (30) days after the issuance of a notice by the Declarant specifying the nature of the default claimed.

Section 7.2 Right to Cure. With respect to any default under Section 7.1 above, the Declarant shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition involving an immediate and imminent threat of substantial injury or harm to persons or property, the Declarant, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, due to such emergency, without advance notice, so long as notice is given as soon as

possible thereafter. To effectuate any such cure, the Declarant shall have the right to enter upon the Parcel of the defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party. A Party shall be responsible for the non-performance or default of its occupants and lessees.

In the event Declarant shall cure a default, the defaulting Party shall reimburse Declarant for all costs and expenses incurred reasonably and in good faith by Declarant in connection with such curative action, plus interest at the Default Rate, within ten (10) business days of receipt of demand, together with reasonable documentation supporting the expenditures made.

Section 7.3 Liens. Costs and expenses accruing and/or assessed against a Parcel pursuant to Section 7.2 above and the amounts described in Section 7.1 shall constitute a lien against the defaulting Party's Parcel. The lien shall attach and take effect only upon Declarant's recordation of a claim of lien in the applicable real estate records office of the county in which the said Parcel is located. The claim of lien shall include the following:

- (i) The name and address of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a non-defaulting and/or curing Party;
- (iii) An identification by name and address (if known) of the defaulting Party or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien;
- (vi) A statement itemizing the total amount due, including interest;
- (vii) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date, book and page of recordation hereof.

The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Party against whose Parcel the lien is claimed, by personal service or by mailing pursuant to Section 9.3 below. The lien so claimed shall attach from the date of

recordation solely in the amount claimed thereby (including interest at the Default Rate as herein provided) and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of Utah. Any such lien shall be expressly subordinate to any duly recorded mortgage or deed of trust encumbering the Parcel of the defaulting Party.

Section 7.4 No Termination for Breach. No breach, whether or not material, of the provisions of this Declaration shall entitle any Party to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this Declaration.

Section 7.5 Limitation of Liability. Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner or occupant of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels running with the land.

Section 7.6 Breach. In the event of breach or threatened breach of this Declaration, only the Parties shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. Without limiting the generality of the foregoing and in addition to Declarant's rights and remedies available hereunder, at law, or in equity, the Declarant shall be entitled to injunctive relief without the requirement of the posting of a bond, it being acknowledged that money damages would be inadequate for the irreparable harm caused by such breach or threatened breach. In the event of a breach hereof, the non-prevailing Party shall pay the reasonable and customary attorneys' fees and costs of the prevailing Party, which shall include the fees and costs of a single appeal of any judgment entered at trial. For purposes of this provision, "prevailing Party" shall include a Party that obtains dismissal of any complaint against it and a Party that



obtains by settlement substantially the relief sought by it in any such proceeding.

## ARTICLE VIII

### COMMON AREAS

Section 8.1 Declarant's Control. All Common Areas in or about the Land shall be subject to Declarant's exclusive control and management. Declarant shall operate, manage, equip, police, light, surface, maintain, repair and replace (or cause all of the same to occur to) the Common Areas in good and reasonable condition and manner and Declarant shall have the sole right and exclusive authority to employ and discharge all personnel with respect thereto and/or hire independent contractors to perform the same. In addition, Declarant may provide (or cause to be provided) security in the Common Areas at a level determined by Declarant.

Section 8.2 Right to Close Common Areas. Declarant may at any time and from time to time close all or any portion of the Common Areas to make repairs or changes or to such extent as may, in Declarant's opinion, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, and close temporarily any or all portions of the Common Areas and perform such other acts in and to Common Areas as, in the exercise of good business judgment, Declarant shall determine to be advisable with a view to the improvement of the convenience and use thereof by occupants and tenants, their employees and invitees, provided that any such closure is no longer than is reasonably necessary for such purpose. Declarant may at any time and from time to time exclude and restrain any person from use or occupancy of any of the Common Areas excepting, however, tenants of the Mall, and bona fide invitees who make use of these areas for their intended purposes and in accordance with the rules and regulations established by Declarant.

Section 8.3 Declarant's Use. Declarant shall at all times have the right to utilize the Common Areas for promotions, exhibits, carnival-type shows, rides, indoor or outdoor shows, displays, automobile and other shows or events; the leasing or licensing of kiosks, push carts and food facilities; landscaping; seating areas; seasonal displays and decorative items; and any other use which, in Declarant's judgment, tends to attract customers to or benefit the customers of the Mall.

Section 8.4 Changes by Declarant. Declarant shall at all times and from time to time have the right and privilege of determining the nature and extent of the Common Areas and of making such changes, rearrangements, additions or reductions in and to the Common Areas which, in its opinion, are deemed to be desirable or which are made as a result of any Governmental Requirements. Such rights shall include, but not be limited to, the following:

(i) changing or modifying and adding to or subtracting from the sizes, locations, shapes and arrangements of parking areas, entrances, exits, driveways, parking aisle alignments, and other Common Areas;

(ii) altering the direction and flow of traffic;

(iii) restricting parking by tenants' employees to designated areas;

(iv) constructing surface, sub-surface or elevated parking areas and facilities;

(v) establishing and changing the level or grade of parking surfaces;

(vi) enforcing parking charges (by meters or otherwise);

(vii) installing landscaped areas;

(viii) constructing additional Buildings or improvements on the Common Areas or elsewhere and adding to or subtracting from the buildings in the Mall, including building additional stories on any Buildings;

(ix) constructing roofs, walls, and any other improvements over, or in connection with any part of, or all of, the Common Areas in order to enclose same;

(x) making alterations, renovations, reductions, or additions anywhere within the Common Areas or other parts of the Mall or Land, or upon any lands or improvements added thereto; and

(xi) doing and performing such other acts in and to the Common Areas as Declarant in its sole discretion, reasonably applied, deems advisable for the use thereof by tenants of the Mall and their customers.

Notwithstanding the foregoing, development on all Parcels shall comply with all Governmental Requirements (including, but not limited to, any zoning code or building code).

Section 8.5 Rules and Regulations. Declarant shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to the use, operation and maintenance of all Common Areas provided that (a) all such rules and regulations affect substantially all tenants, invitees and employees of the Mall equally. The rules and regulations may include, but shall not be limited to, the hours during which the Common Areas shall be open for use. In the event there is a conflict between any such rules and regulations and any lease executed by the Declarant, the terms and provisions of such lease shall prevail.

Section 8.6 Mall Tenant's Rights and Obligations. The rights of tenants of the Mall in and to the use of the Common Areas shall at all times be subject to the rights of others to use the same in common with any such tenant, and it shall be all such tenants' duty to keep the Common Areas free and clear of any obstructions or interferences created or permitted by or resulting from such tenants' operations. All such tenants and their respective employees and invitees are, except as otherwise provided in their respective leases, authorized and privileged during the terms of said leases to use the Common Areas for their respective intended purposes in common with other persons.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1 Estoppel Certificates. Each Party shall upon not less than thirty (30) days from receipt of written notice from another Party execute and deliver to the requesting Party a certificate stating (i) that either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge any other Party is in

default in any respect under this Declaration and if in default, specifying such default. The holder of a mortgage of beneficiary of a deed of trust on any Parcel shall have the right to cause the Owner of such Parcel to obtain an estoppel certificate at any time and from time to time.

Section 9.2 Term and Perpetuity. The agreements, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect, to the benefit of and being binding upon all Parties, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of all such parties until the expiration of sixty (60) years from the date hereof, unless terminated by the consent of all Parties pursuant to a writing recorded in the real property records of City of Logan, County of Cache, State of Utah. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

Notwithstanding the foregoing, the easements contained herein binding and benefiting the Parcels shall be perpetual and shall run with the land.

Upon termination of the agreements, conditions, covenants and restrictions of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as related to the easements cited and mentioned herein, shall terminate and have no further force or effect.

Section 9.3 Notices. Any notice required or permitted to be given under this Declaration shall be in writing and shall be deemed to have been given by reputable national overnight delivery service (such as FedEx or UPS), or upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, and addressed in either case to the Party being notified at the address given below (or such other address which any Party may designate for itself from time to time hereafter by written notice to all other Parties):

If to Declarant:

Elliot S. Nassim  
Mason Asset Management Inc.  
747 Middle Neck Road Suite 101  
Great Neck, NY 11024

Section 9.4 Ground Lessee Assignment. The rights and obligations of any Party

hereunder may be assigned in whole or in part to one or more ground lessees or sublessees, which rights and obligations shall be expressly assumed by such ground lessees or sublessees for the term of the ground leases or subleases between such Party and such ground lessees or sublessees.

Section 9.5 Harmony. Declarant desires to maintain a reasonably harmonious exterior appearance for the Buildings and related improvements of the Mall. Alterations that will substantially change the exterior of any such Buildings shall not be made without the consent of the Declarant, such consent not to be unreasonably withheld, conditioned or delayed.

Section 9.6 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 9.7 No Public Dedication. Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the Land, the Mall or any portions thereof, to the general public, or for any public use or purpose whatsoever. Except as may be specifically provided herein, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party, nor shall any third party be deemed or considered to be a beneficiary of any of the provisions herein contained.

Section 9.8 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 9.9 Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between Declarant and any future Owners. It is understood that the relationship between the Declarant and any future Owners is an arm's length one that shall at all times be and remain that of separate owners of real property. Neither Declarant nor any subsequent Owner shall have the right to act for or on behalf of Declarant or another Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Declarant or Owner to be charged or bound, except as otherwise specifically provided herein.

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SIGNATURE APPEARS ON FOLLOWING PAGE

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

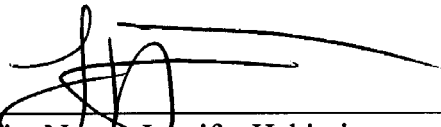
WITNESSETH:

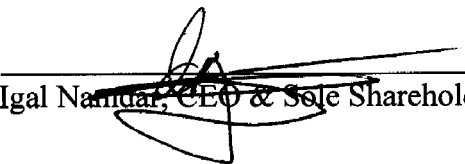
DECLARANT:


**CACHE VALLEY REALTY LLC,**  
a Utah limited liability company

By: Namco Realty LLC,  
a New York limited liability company  
Its: Managing Member

By: Namco Realty LTD.,  
a British Virgin Islands company  
Its: Managing Member

  
\_\_\_\_\_  
Print Name: Jennifer Hakimian

By:   
\_\_\_\_\_  
Igal Namdar, CEO & Sole Shareholder

  
\_\_\_\_\_  
Print Name: Byron Hakimi

STATE OF NEW YORK

COUNTY OF NASSAU

On the 25<sup>th</sup> day of May, 2018 before me, the undersigned, personally appeared Igal Namdar, in his capacity as CEO & Sole Shareholder of Namco Realty LTD., a British Virgin Islands company, the Managing Member of Namco Realty LLC, a New York limited liability company, the Managing Member of Cache Valley Realty LLC, a Utah limited liability company, on behalf of the limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

**DEBRA A. MANDL**  
Notary Public, State of New York  
No. 02MA6289076  
Qualified in New York County  
Commission Expires September 23, 2021

  
\_\_\_\_\_  
Notary Public      Sign and affix stamp

(SIGNATURE PAGES CONTINUE ON NEXT PAGE)

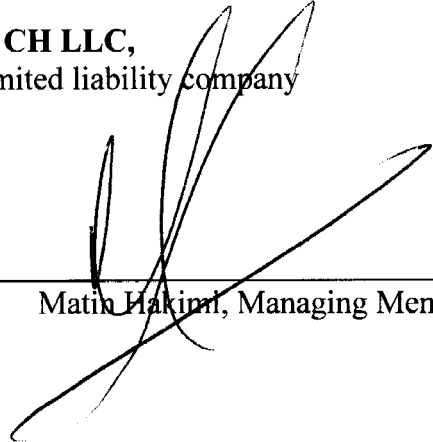
IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first written above.


WITNESSETH:

DECLARANT:

**CACHE CH LLC,**  
a Utah limited liability company

  
Print Name: Gabriella Schmolian

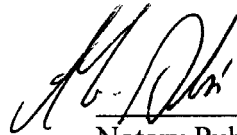
By:   
Matin Hakimi, Managing Member

  
Print Name: Brian Banituy

STATE OF NEW YORK

COUNTY OF NASSAU

On the 25<sup>th</sup> day of MAY, 2018 before me, the undersigned, personally appeared Matin Hakimi, in his capacity as Managing Member of Cache CH LLC, a Utah limited liability company, on behalf of the limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

**ALEN DILMANI**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 01DI6316331**  
**Qualified in Nassau County**  
**My Commission Expires December 08, 2018**

Sign and affix stamp

*(SIGNATURE PAGES CONTINUE ON NEXT PAGE)*

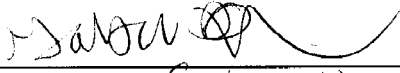


IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first written above.

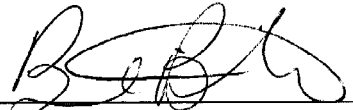
WITNESSETH:

DECLARANT:

**CACHE NASSIM LLC,**  
a Utah limited liability company

  
Print Name: Gabriella Schmulian

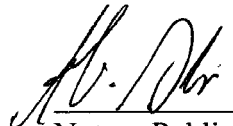
By:   
Elliot Nassim, Managing Member

  
Print Name Brian Baniliy

STATE OF NEW YORK

COUNTY OF NASSAU

On the 25<sup>th</sup> day of MAY, 2018 before me, the undersigned, personally appeared Elliot Nassim, in his capacity as Managing Member of Cache Nassim LLC, a Utah limited liability company, on behalf of the limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**ALEN DILMANI**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DI6316331  
Qualified in Nassau County  
My Commission Expires December 08, 2018  
Sign and affix stamp

EXHIBIT A

Legal Description

The land referred to herein is situated in the County of Cache, State of Utah, and is described as follows:

**Parcel 1: (05-014-0006 & 05-014-0041)**

Part of Block 1, Plat "D", Logan Farm Survey: Beginning at a point located South along the East Right-of-Way line of U.S. Highway 91, from the North line of Lot 5, of said Block 1, said point being described in Warranty Deed recorded in Book 105 at Page 437, as being located 67.0 feet South of the Intersection of the East Right-of-Way line of U.S. Highway 91 and the South Right-of-Way line of 14th North Street, as now established; said point of beginning being in the East Right-of-Way line of the U.S. Highway 91 and the South Right-of-Way of 14th North Street, and running thence South 88°24'27" East along said South Right-of-Way line of 14th North Street 131.44 feet; thence South 0°55'43" West 165.85 feet; thence South 87°04'00" East 73.6 feet; thence North 00°55'43" East 167.6 feet to the South line of said 14<sup>th</sup> North Street; thence South 88°24'27" East along said South line 1037.43 feet; thence South 1°17'35" West 122.10 feet; thence South 88°24'27" East 124.00 feet to the West Right-of-Way line of Second East Street; thence South 1°17'35" West along said West line 1000.66 feet; thence North 88°54'28" West 1359.20 feet to the East Right-of-Way line of U.S. Highway 91, thence North 0°55'43" East along said East line 1134.69 feet to the point of beginning.

Less and excepting therefrom: That portion deeded to The City of Logan in Quit Claim Deed recorded August 28, 2001 as Entry No. 768508, in Book 1033, at Page 1106, of Official Records.

Less and excepting therefrom: That portion deeded to the Utah Department of Transportation in Warranty Deed recorded February 14, 2003 as Entry No. 813952, in Book 1198, at Page 615 of Official Records.

**Parcel 2: (05-015-0001)**

Part of the Northwest Quarter of Section 27, Township 12 North, Range 1 East of the Salt Lake Base and Meridian, described as follows: Beginning at a point in the East right of way line of U.S. Highway 89 and 91, said point being 608.2 feet North from the Southwest corner of Lot 3, Block 1, Plat "D" Logan Farm Survey; and running thence North 225.4 feet along the East line of said right of way; thence East 354.3 feet; thence South 225.4 feet to a point East of beginning thence West 354.3 feet to beginning.

Less and excepting therefrom: That portion deeded to the City of Logan in Warranty Deed recorded March 19, 2001 as Entry No. 756754, in Book 994, at Page 827 of Official records.

**Parcel 3: (05-015-0051)**

Lot 1, MARKETPLACE SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Cache County Recorder, State of Utah.

Less and excepting therefrom: That portion deeded to The City of Logan in Quit Claim Deed recorded August 16, 2007 as Entry No. 952152, in Book 1478, at Page 916, of Official Records.

**Parcel 4: (05-015-0052)**

Lot 2, MARKETPLACE SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Cache County Recorder, State of Utah.

Less and excepting therefrom: That portion deeded to Logan City, a Utah municipal corporation in Warranty Deed recorded August 30, 2013 as Entry No. 1094177, in Book 1783, at Page 785, of Official Records.

**Parcel 5: (05-015-0054)**

Lot 4, MARKETPLACE SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Cache County Recorder, State of Utah.

**Parcel 6:**

Benefits, if any, as provided by that certain Restriction Agreement and Grant of Easements for Cache Valley Plaza recorded March 19, 2001 as Entry No. 756756, in Book 994, Page 832 of Official Records.

**Parcel 7:**

Benefits, if any, as provided by that certain Cross Easement Agreement recorded January 30, 2002 as Entry No. 780028, in Book 1076, Page 390 of Official Records.

**Parcel 8:**

Benefits, if any, as provided by that certain Cross Easement Agreement recorded April 11, 2002 as Entry No. 785537, in Book 1093, Page 588 of Official Records.

Tax ID: 05-014-0006, 05-014-0041, 05-015-0001, 05-015-0051, 05-015-0052, and 05-015-0054

**EXHIBIT B**

**Site Plan**

