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REC'D FOR LAYTON INDUSTRIAL HOLDINGS LC

MARSHALL WAY COMMERCIAL PLAZA SUBDIVISION

PROTECTIVE COVENANTS

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, LAYTON INDUSTRIAL HOLDINGS L.C., (hereinafter called "L.I.H.") a Utah Limited Liability company, is the owner of all that certain real property located in Layton, Davis County, State of Utah, more particularly described in Exhibit "A", (Real Property Description) attached hereto and by this reference incorporated herein.

The Properties consist of six (6) lots, and limited common areas and facilities as mentioned herein, and as shown on the Subdivision Plat.

WHEREAS, it is the desire and intention of L.I.H. to develop all of said property as a commercial park; and

WHEREAS, L.I.H. is about to sell, lease, and/or develop the property described in Exhibit "A," which it desires to be subject, pursuant to a general plan of improvement, to certain restrictions, conditions, covenants, and agreements between it and the several purchasers of said property and between the several purchasers of said property themselves, as hereinafter set forth.

NOW, THEREFORE, L.I.H. declares that the property described in Exhibit "A" is held and shall be sold, conveyed, leased, occupied, and held subject to the following restrictions, conditions, covenants and agreements between it and the several owners, purchasers, and lessees of said property, and between themselves and their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of THE MARSHALL WAY COMMERCIAL PLAZA OWNERS' ASSOCIATION, a Utah non-profit corporation as filed with the State of Utah Department of Commerce, Division of Corporations.

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Section 2. "Association" shall mean and refer to THE MARSHALL WAY COMMERCIAL PLAZA OWNERS' ASSOCIATION, a Utah non-profit corporation, its successors or assigns. The "Board of Trustees" or "Board" shall be the elected body having its normal meaning under Utah corporate law.

Section 3. "Assessment" shall mean and refer to assessments levied against all Lots in the Properties to fund Common Expenses.

Section 4. "Bylaws" shall mean and refer to the Bylaws of THE MARSHALL WAY COMMERCIAL PLAZA OWNERS' ASSOCIATION, a Utah non-profit corporation attached hereto as Exhibit "B" and incorporated herein by this reference, as they may be amended from time to time.

Section 5. "Common Areas" shall be an inclusive term referring to landscape areas and roadways, etc., as designated on the Plat. The initial Common Areas shall be conveyed to the Association prior to the conveyance of a Lot to any Lot purchaser other than a builder or developer holding title for the purpose of development and resale.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Lot Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to these Covenants, the Bylaws, and the Articles of Incorporation of the Association.

Section 7. "Declarant" shall mean and refer to LAYTON INDUSTRIAL HOLDINGS, L.C., a Utah Limited Liability Company, or its successors, successors-in-title, or assigns who take title to any portion of the Properties described on Exhibit "A" for the purpose of development and sale and are designated as Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 8. "Lot" shall mean and refer to a portion of the Properties, whether developed or undeveloped, intended for development, use and occupancy as designated on the Plat.

Section 9. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 10. "Mortgage" shall mean and refer to a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 11. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 12. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 13. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Trustees, the lessee (rather than the fee owner) will be considered the Owner.

Section 14. "Parcel Developer" shall mean any developer who purchases land within the Properties (as defined in this Article I) for the purpose of development and sale.

Section 15. "Person" shall mean a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 16. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto.

Section 17. "Special Assessment" shall mean and refer to assessments levied in accordance with Article XX, Section 3 of these Covenants.

ARTICLE II

MUTUAL AND RECIPROCAL BENEFITS, ETC.

All of said restrictions, conditions, covenants, and agreements shall be made for the direct, mutual and reciprocal benefit of all of the land on the attached map and shall be intended to create mutual and equitable servitudes upon said land in favor of all other land shown on said map, and to create reciprocal right and obligations between the respective owners of all of the land shown on said map and to create a privity of contract and estate between the grantees of said land, their heirs, successors and assigns, and shall, as to the owners of said land in said tract, their heirs, successors, and assigns, operate as covenants running with the land for the benefit of all of the land in said Properties.

ARTICLE III

TERMS OF RESTRICTIONS

Each condition and covenant in the MARSHALL WAY COMMERCIAL PLAZA shall continue until such time as L.I.H., or its successors or assigns, and the Owners of a majority of the Lots described in Exhibit "A," acting in mutual agreement may, by written declaration signed and acknowledged by them and recorded in the deed records of Davis County, alter or amend such restrictions, conditions and covenants.

ARTICLE IV

CREATION OF REVIEW BOARD

The Board of Trustees of Marshall Way Owners' Association shall be a Commercial Plaza Review Board, sometimes called "Review Board" to enforce these covenants.

The Review Board shall review and approve the proposed use of each parcel of land, the architectural drawings of the buildings, proposed for each site, and any variances deemed necessary; keeping in mind the broad outlines of the purpose of the Properties.

The Review Board shall have all powers necessary to approve the land use and plans, and to enforce their decisions in accordance with the covenants as outlined herein.

This review may take place at and as part of the agreement to sell the land by L.I.H. *or* after that sale but before and as a condition to the issuance of a building permit for any construction on the land involved.

At the time of the sale and development of all of the Lots three members of the Review Board shall be selected by a majority vote of the owners of the Lots with each Lot entitled to one (1) vote.

ARTICLE V

PERMITTED USES

The purpose of the Properties to be developed on the lands described in Exhibit "A" is to create a wholesome environment for the conducting of selective manufacturing, marketing, and commercial enterprises which do not create a hazard or are not offensive due to appearance or to the emission of noxious odors, smoke or noise, and to promote research laboratories and regional

office facilities.

Allowed uses in the Properties shall include manufacturing, fabrication, wholesale and distribution, warehousing for local distribution purposes, offices, service facilities for the Properties' occupants, and similar uses permitted as zoned by the City of Layton, State of Utah, which create benefits to local commerce and the development of additional employment opportunities.

ARTICLE VI

PROHIBITED USES

No portion of the Properties may be occupied for any of the following uses:

- (1) Residential purposes, except for the dwelling of watchmen or other employees attached to a particular enterprise authorized in the area;
- (2) Manufacturing, storing, distributing, or selling of explosives;
- (3) Storage, in bulk, of junk, wrecked autos or other unsightly or second-hand materials;
- (4) Sexually oriented business or businesses; and
- (5) Manufacturing, storing, distributing, or selling of any product or item which constitutes a fire hazard to the property or adjoining premises, or which emit noise or vibrations which would or could injure the enjoyment of the property or adjoining premises, or for any use which is in violation of the ordinances of Layton City, and the laws of the State of Utah.

ARTICLE VII

PARKING REQUIREMENTS

No long term parking will be permitted on any Common Areas in the Properties. It is the responsibility of the property owners, their successors and assigns, to provide for long term parking facilities as needed on their own property, subject to the approval of the Review Board.

ARTICLE VIII

BUILDING AND CONSTRUCTION REQUIREMENTS

Any buildings erected on the property shall be of masonry construction, or tilt-up concrete.

All other types of construction must first be submitted to and have the written approval of the Review Board.

Renderings of drawings, specifications and samples of materials proposed for use in the construction or alteration of any building, sign, or loading dock, and a site plan which clearly shows the proposed parking facilities, and driveways, must first be submitted to and have the written approval of the Review Board, or its designated representative.

The placement on the building roofs of unsightly items such as cooling towers, mechanical equipment, etc. which would have an adverse effect upon the aesthetics of the building and the Properties shall not be allowed.

All utility services, including but not limited to, electrical power, telephone, gas, water, and sewer, shall be constructed underground at all building sites in order to preserve a clean and uncluttered appearance of the Properties.

No plant effluents shall be discharged into the sanitary sewer or storm drains which contain any material which would be harmful to the sewer lines, the sewage treatment plant structure, interfere with the normal sewage processing action, or create a danger to workmen maintaining the sewer lines and sewage treatment plants. All effluents discharged into the sanitary sewer lines shall meet the requirements of the Layton City, in addition to these Covenants.

The Review Board shall review the proposed use of the property and shall reserve the right to refuse to approve any plan for a use which, in the judgment of the Review Board, is not in keeping with the stated purposes of the Properties. Where a proposed development could become offensive, the Review Board shall have the right to require special equipment or special design features to overcome such conditions.

ARTICLE IX

STORAGE

When necessary to store or keep materials in the open, the storage area shall be fenced with a screening fence at least six (6) feet in height, approved by the Review Board. Dumpsters must be located inside the building or in the fenced outside storage area.

ARTICLE X

SIGNS

All signs proposed to be placed within the Properties shall conform to the following general requirements:

- (1) No billboards will be permitted.
- (2) A single sign or nameplate shall be allowed in the front of each facility advertising only the name, produce or service of the occupants.
- (3) Signs attached to buildings shall project not more than sixteen (16) inches beyond the face of the building, nor project above the parapet or eaves of the buildings. The face of the sign shall be parallel to the face of the building.
- (4) The total size of sign is limited to twenty-five (25) feet or one (1) square foot for each lineal foot of the street frontage of the building, whichever is larger. A company logo sign not to exceed sixteen (16) square feet in area will be allowed in addition to the above requirements.
- (5) Signs may be independently seated in the front of the building if they are architecturally designed to add to the aesthetic appearance of the building and property.
- (6) Floodlighting of signs at night is acceptable but the use of animated or flashing signs is prohibited.

ARTICLE XI

COMMENCEMENT OF CONSTRUCTION

If, after the expiration of eighteen (18) months from the date of a sale of any property within the Properties any purchaser shall not have begun, in good faith, construction of an acceptable building upon any portion of said property, L.I.H. retains the option to refund the purchase price, enter into possession of said land, and receive a deed of reconveyance to the property. At any time, L.I.H. may extend, in writing, the time in which such building may be begun.

ARTICLE XII

COVENANTS RUNNING WITH THE LAND

It is understood and agreed that said conditions and restrictions shall operate as covenants running with the land and that a breach or violation thereof may be enjoined, abated or remedied by appropriate proceedings by L.I.H. and/or other owners of said Lots or parcels of land in the Properties, or their heirs, successors, assigns, or bona fide purchasers under contract.

Invalidation of any of the foregoing Restrictive Covenants shall not affect the validity of any other of such covenants, but the same shall remain in full force and effect.

ARTICLE XIII

PROPERTY RIGHTS

Every Owner shall have a right and easement of enjoyment in and to the Common Areas, subject to these Covenants as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, members, and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the Lot's lessee.

ARTICLE XIV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in the Association.

No Owner, whether one (1) or more Persons shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of these Covenants and the Bylaws. The membership rights of a Lot owned by a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of these Covenants and the Bylaws.

Section 2. Voting. Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section 1 herein; there shall be only one (1) vote per Lot.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those persons determine among themselves and advise the Secretary of the Association, in writing, prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

ARTICLE XV

MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Comm Area with such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Areas.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of Common Areas shall be a Common Expense to be allocated among all Lots as part of the Assessment.

Section 2. Owners' Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas, storage areas, and other improvements comprising the Lot.

Section 3. Association's Responsibilities. Upon resolution of the Board of Trustees, each Lot Owner shall be responsible for paying, through Assessment, costs of maintenance and improvements within the Common Areas.

ARTICLE XVI

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Trustees, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas, including the landscaping. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a TWO MILLION (\$2,000,000.00) DOLLAR single person limit as respects bodily injury and property damage, and at least a FIVE MILLION (\$5,000,000.00) DOLLAR limit per occurrence, if reasonably available, and a ONE MILLION (\$1,000,000.00) DOLLAR minimum property damage limit.

Premiums for all insurance on the Common Areas shall be Common Expenses of the Association and shall be included in the Assessment, as defined. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Trustees shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Utah which

holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Areas shall be for the benefit of the Association, its Members, and Mortgagees providing construction financing on the Common Areas; all policies secured at the request of Lot Owner shall be for the benefit of the Owners of Lots and the Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Trustees; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Trustees hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Layton City, State of Utah, area.

(f) The Association's Board of Trustees shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Trustees, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any Trustee, officer, or employee of the Association or its duly authorized manager without prior demand,

in writing, delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or any Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this section, the Board may obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; Trustees' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on Trustees, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the Trustees' best business judgment but, if reasonably available may not be less than three (3) months' assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Lot which is subject to the terms of these Covenants, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article XVIII for insurance on the Common Areas, unless the Association, at the request of the Lot Owners carries such insurance (which it is not obligated to do hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with these Covenants. The Owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition.

A Lot Owner may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots subject to its jurisdiction and the standard for

returning the Lots to their natural state in the event the structures are not rebuilt or reconstructed.

Section 3. Damage and Destruction. (a) Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Trustees or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Areas or to the common property shall be repaired or reconstructed unless the Members representing at least seventy-five (75%) percent of the total vote of the Association, if Common Areas, or the Lot Owners representing at least seventy-five (75%) percent of the total vote whose common property is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees providing construction financing for such damaged property.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Areas or the common property shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and the Mortgagee(s) as their interest may

appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Areas or to the common property for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Trustees shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Assessments, provided, if the damage or destruction involves the common property of a Neighborhood Association, only the Owners of Lots affected shall be subject to assessment therefor. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XVII

NO PARTITION

Except as is permitted by the Board of Trustees, there shall be no physical partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of these Covenants. This Article shall not be construed to prohibit the Board of Trustees from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to these Covenants.

ARTICLE XVIII

CONDEMNATION

Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least two-thirds (2/3rds) of the total Association vote and Declarant, as long as Declarant owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property described in Exhibit "A" of these Covenants, and Members representing at least seventy-five (75%) percent of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in

accordance with plans approved by the Board of Trustees of the Association. If such improvements are to be repaired or restored, the above provisions regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Trustees of the Association shall determine.

ARTICLE XXIX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Areas. The Association, subject to the rights of the Owners set forth in these Covenants, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including, without limitation, asphalt paving and snow removal, and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Trustees, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Trustees, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by these Covenants. Sanctions may include monetary fines and suspension of the right to vote and the right to use any of the Common Areas. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce city ordinances or permit Layton City to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by these Covenants or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or

reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. The Association shall permit the Declarant reasonable authority to designate sites within the Properties for fire, police, water, and sewer facilities.

ARTICLE XX

ASSESSMENTS

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Trustees to fund Common Expenses for the benefit of all Members of the Association and Special Assessments as described in Section 4 below.

Assessments shall be levied equally on all Lots, except as provided in Section 4 below. Parcel Developers shall pay one hundred (100%) percent of the Assessments levied upon the Lots designated for such parcel on the date the budget is adopted, such amount to be adjusted at least semi-annually to reflect certificates of occupancy issued. Except as provided in Section 4 below, Assessments shall be levied equally on all Lots within the Properties for whose benefit such expenses are incurred as provided in Section 3 below. Special Assessments shall be levied as provided in Section 4 below. Each Owner, by acceptance of a deed or recorded contract of sale to any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All Assessments, together with interest at a rate not to exceed the highest rate allowed by Utah law as computed from the date of delinquency first occurs, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee, nominee of the Mortgagee, or third party purchaser who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or management agent of the Association setting forth whether such Assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such Assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed FIFTY (\$50.00) DOLLARS for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Trustees which may include, without limitation, acceleration of the annual Assessment and any Assessment for delinquents. Unless the Board otherwise provides, the Assessment shall be paid in quarterly installments.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including by way of illustration and not limitation, by non use of Common Areas or abandonment of the Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under these Covenants or by the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared.

The Assessment to be levied for the coming year against each Lot subject to assessment under Section 7 below shall be computed by dividing the budgeted Common Expenses by the total number of Lots for the property described on Exhibit "A" and property as, from time to time, may be subjected to these Covenants. The Board shall cause a copy of the Common Expense budget and notice of the amount of Assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Members by the vote of Members or their alternates representing at least a majority of the total votes in the Association. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Article II, Section 4, of the Bylaws.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time

as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

In the event the proposed budget for the Association is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3. Special Assessments. In addition to the assessments authorized in Section 1 of this Article, the Association may levy a Special Assessment or Special Assessments from time to time; provided, such assessment shall have the affirmative vote or written consent of Members representing at least fifty-one (51%) percent of the votes in the Association. The obligation to pay Special Assessments shall be computed on the same basis as for Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Lien for Assessments. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rate share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Capital Budget and Contribution. The Board of Trustees shall annually prepare a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the budget and assessment, as provided in Section 2 of this Article.

Section 6. Date of Commencement of Assessments. The Assessments provided for herein shall commence as to each Lot on the first day of the first month following: (i) the date of conveyance of the Lot by Declarant; or (ii) the effective date of the first budget, whichever is later. Assessments shall be due and payable in a manner and on a schedule as the Board of Trustees may provide. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

Section 7. Subordination of the Lien to Institutional First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any institutional first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of an institutional first Mortgage, or transfer to an institutional first Mortgagee or third party pursuant to a deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding an institutional first Mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns.

ARTICLE XXI

ARCHITECTURAL STANDARDS

The Board of Trustees shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Board.

No construction, which term shall include within its definition staking, clearing,

excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no planting or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article until the requirements of each have been fully met, and until the approval of the appropriate entities has been obtained.

Section 1. New Construction Committee. The New Construction Committee (NCC) shall be members of the Board of Trustees and have exclusive jurisdiction over all original construction on any portion of the Properties. The NCC shall prepare and promulgate design and development guidelines and application and review procedures, all as part of the Community Development Code and Land Use Standards ("CDC-LUS"). Copies shall be available from the NCC for review. The guidelines and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend the CDC-LUS. It shall make the CDC-LUS available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

Until one hundred (100%) percent of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, Declarant retains the right to appoint all members of the NCC, which shall consist of at least five (5), but no more than seven (7) persons. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Trustees shall appoint the members of the NCC in the same manner as provided in Section 2 of this Article for the Modifications Committee.

Section 2. Modifications Committee. The members of the Board of Trustees shall constitute a Modifications Committee (MC). The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the appropriate board or committee subsequently created or subsequently subjected to these Covenants so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction re-assumed at any time by written notice. The MC shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with the CDC-LUS. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation.

Section 3. No Waiver of Future Approvals. The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The NCC may authorize variances from compliance with any of the provisions of the CDC-LUS when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing; (b) be contrary to the restrictions set forth in the body of these Covenants; or (c) estop the Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

ARTICLE XXII

GENERAL PROVISIONS

Section 1. Term. The covenants and restrictions of these Covenants shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to these Covenants, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date these Covenants is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case these Covenants shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend these Covenants. After such conveyance, Declarant may amend these Covenants so long as it still owns property described in Exhibit "A" for development as part of the Properties, and so long as the amendment has no material adverse effect upon any right of any Owner. No amendment required by any state agency will be deemed material. Thereafter and otherwise, these Covenants may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of the votes held by Members other than

Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Davis County, Utah.

If an Owner consents to any amendment to these Covenants or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Section 3. Indemnification. The Association shall indemnify every officer and trustee against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer or trustee, in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Trustees to which he or she may be a party by reason of being or having been an officer or trustee. The officers and trustees, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and trustees shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and trustee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or trustee or former officer or trustee may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and Trustees' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Security. The Marshall Way Commercial Plaza Owners' Association will strive to maintain The Marshall Way Commercial Plaza as a safe, secure environment.

HOWEVER, NEITHER THE MARSHALL WAY COMMERCIAL PLAZA OWNERS' ASSOCIATION NOR LAYTON INDUSTRIAL HOLDINGS, L.C. SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE MARSHALL WAY COMMERCIAL PLAZA OWNERS' ASSOCIATION AND LAYTON INDUSTRIAL HOLDINGS, L.C. AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING INVITEES ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, LOTS, AND TO THE CONTENTS OF

LOTS AND FURTHER ACKNOWLEDGE THAT LAYTON INDUSTRIAL HOLDINGS, L.C. HAS MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

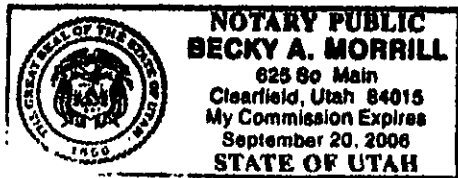
DATED this 17 day of November, 2003.

LAYTON INDUSTRIAL HOLDINGS, L.C., a Utah limited liability company

By: Todd Morgan
Todd Morgan, Member/Manager

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On the 18th day of November, 2003, personally appeared before me TODD MORGAN, who being by me duly sworn did say that he is the Member/Manager of LAYTON INDUSTRIAL HOLDINGS, L.C., and that the within and foregoing instrument was signed in behalf of said company by authority of a resolution of its members, and the said TODD MORGAN duly acknowledged to me that said company executed the same.



Becky A. Morrill
NOTARY PUBLIC

EXHIBIT "A"

A part of the North half of Section 19, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and more particularly described as follows: Beginning at a point on the Westerly boundary of Lot 3 of Layton Industrial Park Subdivision; which point is South 89°50'40" West 551.18 feet along the Section line and South 0°09'20" East 42.00 feet to the Northwest corner of Subdivision Lot 3 and South 34°43'40" East 326.96 feet and South 34°43'40" East 174.57 feet along the Westerly boundary of said Lot 3 from the North Quarter corner of Section 19, Township 4 North, Range 1 West, Salt Lake Base and Meridian; and running thence North 89°50'40" East 622.86 feet; thence South 35°08'15" East 255.61 feet along the Easterly boundary of Subdivision Lot 3; thence South 89°50'40" West 625.09 feet; thence North 34°43'40" West 254.34 feet along the Westerly boundary of Subdivision Lot 3 to the point of beginning