

When Recorded Return To:  
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RODNEY D. CAMPBELL  
UTAH COUNTY RECORDER  
2009 Nov 24 12:02 pm FEE 95.00 BY SW  
RECORDED FOR INTEGRATED TITLE INSURANCE

**DECLARATION  
OF  
PROTECTIVE COVENANTS, AGREEMENTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 2  
LOTS 3, 4, 7, 8, and 9**

THIS DECLARATION OF PROTECTIVE COVENANTS, AGREEMENTS, EASEMENTS, CONDITIONS AND RESTRICTIONS ("The Declaration") is made this 20<sup>th</sup> day of November, 2009, by **Vineyard Industrial, LLC**, a Utah limited liability company, **Anderson Geneva, LLC.**, a Utah limited liability company, and **Ice Castle Retirement Fund, L.L.C.** (hereinafter collectively referred to as "Grantor").

**WITNESSETH:**

**Whereas**, Grantor, Vineyard Industrial, LLC, is the fee simple owner of certain real property comprised of lots within a subdivision known as EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 2 AMENDED, as amended, located at Vineyard Town, Utah County, Utah, and in particular, lots within the subdivision known as Lots 3, 4, 7, 8, and 9 (herein referred to as the "Property");

**Whereas**, Grantor is the owner of certain other lands within Vineyard Town and near to the Property, including, but not limited to subdivisions known as EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 1, EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 3, EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 4, a subdivision which is approved but for which no plat is finally approved known as EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 5, and over 1,000 acres of other property adjacent or near to the Property (herein sometimes referred to as "Other Property" or the "Subdivisions" as defined below);

**Whereas**, Grantor owns adjacent land and has allowed the development of subdivisions adjacent to or near the Property, including Eastlake at Geneva Industrial Business Park Phase 1 Amended, Eastlake at Geneva Industrial Business Park Phase 2 amended, Eastlake at Geneva Industrial Business Park Phase 3 Plat A Amended, and Eastlake at Geneva Industrial Business Park Phase 4 and other future subdivisions which may be governed and joined in a common master owner's association (the "Subdivisions");

**Whereas**, Grantor is desirous of subjecting the Property to restrictions, reservations of rights and covenants which covenants, conditions, restrictions, and reservations are hereinafter

set forth ("Protective Covenants");

**Whereas**, Grantor has previously recorded that Declaration of Protective Covenants, Agreements, Easements, Conditions and Restrictions for Eastlake at Geneva Industrial Business Park, Phase 1 and Phase 3, with the Utah County Recorder's Office as Entry No. 170124:2007, on December 7, 2007, amended as Entry No. 11269:2008, on January 30, 2009 and Entry No. 32246:2009 on March 27, 2009 and all amendments thereto (hereinafter referred to as the "Eastlake CCRs"), which Eastlake CCRs are by reference made a part hereof; and

**Whereas**, Grantor desires to benefit lands and uses surrounding the Property, including but not limited to the Subdivisions and Other Property.

### DECLARATION:

**Now, Therefore**, Grantor does hereby proclaim, publish and declare that the Property shall be held, owned, transferred, sold, conveyed, hypothecated, leased, subleased, occupied, and improved in accordance with and subject to the Protective Covenants hereinafter set forth which Protective Covenants and this Declaration shall run with the land and be binding upon Grantor and upon all parties having or acquiring any right, title or interest in and to any part of the Property, and shall inure to the benefit of Grantor, and is enforceable against the Property and its owners after the Property is conveyed to a third party by Grantor.

### ARTICLE I

#### DEFINITIONS

"Association" shall mean the East Lake at Geneva Owner's Association, a non-profit corporation formed by Grantor and presently operated in conjunction with the Eastlake CCR's for the sole purpose of managing, holding and maintaining a private road for the benefit of access to the Subdivisions, common areas related to the Subdivisions, a private railroad crossing which may provide or benefit future access to the Property, maintaining signs and other appurtenances which may in the future benefit or enhance the image and value of the Property, and for performing the tasks set forth in the Eastlake CCR's, and as granted therein, enforcement of the Protective Covenants therein.

"Affiliate" shall mean, when used with reference to a specific person or entity, any person that directly or indirectly is controlled by or is under common control with the specified person or entity.

"Back of Curb" shall mean the farthest edge of a Street curb adjacent to a Street. The public utility easement areas on a Building Site will typically abut the Back of Curb.

"Building" shall mean and include, but not be limited to, any structure built for permanent use on a Building Site, and all projections or extensions thereof, including but not limited to garages outside platforms and decks, loading docks, storage tanks, carports, canopies, enclosed malls and porches, sheds, tents, mailboxes, radio or TV antenna, satellite dishes or other communication facilities, fences, signboards, or any other temporary or permanent

improvement to such Building Site.

"Building Site" shall mean any Building location within a Lot.

"Committee" shall mean the Architectural Committee established by the Grantor and Owner as provided at Article X. Grantor may in the future assign its rights to control the Committee to a third party or to the Association or Master Association.

"Common Utility Facilities" means all pipes, lines, wires, conduits and related facilities and improvements for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of systems, that are intended, designed or used for the benefit of more than one Building Site within the Subdivisions, including the Property, and which have not been conveyed and accepted by any municipality and which are conveyed for ownership to the Association; provided, however, that if such facilities are constructed or installed after the date of this Declaration and are intended or designed for the benefit of less than all of the Subdivisions, Grantor or the Association may designate such facilities as not being Common Utility Facilities, or may reasonably appropriate costs of maintenance of such facilities according to use and according to those parties who may use the facilities. Any Common Utility Facilities may be maintained by the Association in its discretion.

"Declaration" shall mean this Declaration of Protective Covenants Agreements, Easements, Conditions and Restrictions, together with all of the provisions provided herein, which shall be recorded in the office of the Utah County Recorder, State of Utah, as the same may from time to time be supplemented or amended in the manner described herein.

"Deed" shall mean any deed, assignment, lease or other instrument conveying title or a leasehold interest in any part of the Property.

"Development Guidelines" means the standards, requirements and restrictions that may be adopted from time to time by the Committee.

"Grantor" shall mean the entity described in the first paragraphs of this Declaration, or its successors or assigns.

"Improvements" shall mean and include, but not be limited to, Buildings, out buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad trackage, retaining walls, roads, screening walls, signs, utilities, and walkways located on a Building Site or within the Common Area.

"Landscaping" shall mean a space of ground covered with lawn and/or ground cover, and/or xeriscape, combined with shrubbery, trees and the like, which may be complemented with earth berms, walls, architectural features, masonry or similar materials.

"Lawn" shall mean a space of ground covered principally with grass.

"Master Association", shall mean an association formed, if at all, in the future by Grantor

or its successors or assigns. Grantor may assign some or all of its rights hereunder to the Master Association.

“Owner” shall mean any person or entity taking ownership or having a leasehold interest in the Property or any portion thereof and shall include Grantor with respect to the Other Property which is owned by Grantor or successors of Grantor receiving delegated rights hereunder. All rights of an Owner shall be exercised by the legal title holder of the Property. However, all tenants, occupants and leaseholders shall be bound to these Protective Covenants the same as an Owner.

“Property” shall mean EastLake at Geneva Industrial Business Park Phase 2 Amended, Lots 3, 4, 7, 8, and 9.

“Protective Covenants” shall mean all of the covenants, conditions, restrictions and reservations set forth in this Declaration.

“Sign” shall mean and include every advertising message, announcement, declaration, demonstration display illustration, insignia, surface or space erected or maintained in view of the observer thereof for the identification, advertisement or promotion of the interests of any person, entity, product or service. The term “Sign” shall also include the sign structure, supports, lighting systems and any attachments, ornaments or other features used to draw the attention of observers. This definition does not include any flag of any government or governmental agency erected for and used to identify said government or governmental agency.

“Street” shall mean any public or private street for general use, or public highway, whether presently constructed, dedicated by plat map or contemplated in the future, under a street plan approved by any public authority or pursuant to this Declaration. Street shall include public and private roadways, walkways and curb and gutter constructed to the boundary of the Property. Until dedicated to the applicable municipal entity, existing Streets known as 1600 North, 400 East north of 1600 North, and 1750 North (herein the "Private Streets") are included in Common Area of the Association and are maintained by the Association. Access and use of the Private Streets is controlled by Grantor and the Association. Owner or its assigns or tenants shall have no use of the Private Streets except as provided herein and unless such rights are granted by Grantor.

“Subdivisions” shall mean Eastlake at Geneva Industrial Business Park Phase 1, Phase 3, Phase 4, future Phase 5 if recorded and the Other Land which may or may not be governed and joined in a common owner's association with the Property.

**ARTICLE II  
PURPOSES OF DECLARATION:  
MUTUALITY OF BENEFITS AND OBLIGATIONS**

Section 2.1 Purposes. The purposes of this Declaration are:

(a) to insure proper use and appropriate, adequate and reasonable development of the Property and each Building Site located thereon;

(b) to preserve and enhance the value to each Owner of all Buildings and Building Sites within the Subdivisions, and Other Property;

(c) to protect against the erection of Improvements constructed of improper, unsuitable or undesirable material;

(d) to encourage the construction and maintenance of attractive, permanent Improvements that are compatible and harmonious as to appearance, function and location with Improvements situated on or planned for Building Sites;

(e) to assure adequate off-street parking space and off-street truck loading and maneuvering facilities on the Property; and

(d) in general to provide for the orderly, aesthetic and high quality architectural and engineering development, improvement and design of the Property and each Building thereon so as to promote the general welfare of the current and future Owners and to enhance the property value of the Property and Improvements and of the Subdivisions and Other Property.

Section 2.2. Mutuality. The Protective Covenants set forth herein are made for the mutual benefit of Grantor and Owner and are intended to create rights and obligations between them, and for the benefit of Grantor and its successors and assignees as rights are delegated, including but not limited to rights transferred to the Association or the Master Association.

### ARTICLE III POWERS, DUTIES, AND RESPONSIBILITIES OF GRANTOR

To the extent Grantor is an Owner of any portion of the Subdivisions or the Other Property, Grantor or its delegated successor or assignee, shall be entitled to all of the same rights and privileges as accorded to Grantor as an Owner of part or all of the Property pursuant to the terms and provisions of this Declaration. In addition, Grantor, its successors and assigns shall have the following powers, duties and privileges that shall pertain only to Grantor, its successors and assigns, and not to any other Owner (except to the extent such powers are expressly delegated in writing by Grantor):

(a) The right to appoint the members of the Committee;

(b) The right to expand or add to the area of the Subdivisions and Other Property; and

(c) Any and all other rights specifically granted to Grantor, as opposed to an Owner within the Property, pursuant to the provisions of this Declaration.

### ARTICLE IV LAND USE

Section 4.1 Existing Use Allowed. The Property is currently used for pipe coating,

pipe sales and pipe storage, steel storage, and the storage, loading and transfer of materials of all types and kinds by rail, and commercial use of rail loading facilities, with associated buildings, structures and facilities as they exist today ("existing uses"), which existing uses may continue unabated on or within the Property. Nothing herein shall relieve the Owners of existing uses and Buildings and Improvements from maintaining the Buildings and Improvements in a clean, neat and orderly way, providing for adequate and routine maintenance, cleaning and painting, garbage and refuse removal, and other maintenance so as to keep the existing uses as sightly as possible. All new additions to existing Buildings and Improvements or new Buildings and Improvements which are related to the existing uses shall be required to comply with the provisions of these Protective Covenants with respect to architectural controls and guidelines.

Section 4.2 New Uses. The Property and any Building Sites shall be used exclusively for high quality industrial, commercial, office, distribution, warehouse and/or retail purposes, and for rail transfer and loading operations and facilities. Buildings and Improvements constructed on the Property shall be of high quality, using architectural materials and designs satisfactory to the Committee, shall take into account all future uses of the Subdivisions and Other Property and shall provide a pleasing, landscaped appearance in order not to detract from the surrounding uses, whether current uses or future planned uses. If Owner subdivides the Property in the future, Owner shall create protective covenants that further and continue these Protective Covenants so that any future Owner shall be required to abide by standards of use and ownership at least as protective or restrictive as provided herein. All uses of the Property and any Building Sites must be approved in advance by the Committee in its reasonable exercise of discretion and taking into account existing uses and future development plans and concepts.

Section 4.3 Prohibited Uses. The following uses are prohibited within the boundaries of the Property:

- a. a manufacturing facility having noxious odors or emissions;
- b. an establishment having nude or semi-nude dancing, entertainment or service providers or any other sexually oriented business;
- c. a flea market;
- d. a facility for the sale of paraphernalia for use with illicit drugs or for any use that is illegal;
- e. a facility for the sale or display of pornographic or sexually explicit material, such as adult theaters, adult bookstores, sexual paraphernalia, or similar uses as determined by the Committee;
- f. a carnival, amusement park or circus;

## ARTICLE V GENERAL RESTRICTIONS, COVENANTS AND REQUIREMENTS

The following restrictions, covenants and requirements are imposed on the Property, and on all Buildings, Improvements and Building Sites located thereon, and are binding upon the Owner:

Section 5.1 Use. Each Building and Building Site shall be used solely for the

purposes set forth in Article IV above. In so using any Building and Building Site, Owner shall at all times comply with all present and future safety, health, environmental or other laws, ordinances, orders, rules regulations and requirements of all federal, state, county and municipal governments, departments, commissions, boards and officers, and all orders rules and regulations of the National Board of Fire Underwriters or any other body exercising similar functions, which may be applicable to the Building and Building Site. Owner and any other person having control over the Property or any part thereof, shall (i) comply with all federal, state and local statutes, rules and regulations governing substances or materials identified as toxic, hazardous or otherwise damaging to person or property by reason of its chemical nature (the "Environmental Laws") and (ii) promptly notify the Grantor and appropriate public authorities in the event of any discharge, spillage, uncontrolled loss, seepage, release or filtration of oil or petroleum or chemical liquids or solids, particles, liquid or gaseous products, hazardous waste or any product or byproduct of Owner's operations that may constitute an environmental hazard upon, on or under the Building or Building Site or anywhere within the Property.

Section 5.2 Location of Buildings. All Buildings shall be set back from the Back of Curb and from the entry points to the Building Sites by at least thirty (30) feet.

The above minimum setbacks have been established to create and preserve an attractive setting for all Buildings and to allow for existing and future easements, storm drainage easements and sewer easements.

Section 5.3 Parking and Parking Areas. No parking shall be permitted on any Street, or any place other than designated parking areas, on Building Sites. All driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials, curbed with concrete and screened to the extent practical with Landscaping materials. Parking areas shall be designed and landscaped to avoid large parking areas without landscaping or other features will be incorporated to break up asphalt areas.

Section 5.4 Landscaping. Landscaping and irrigation shall be installed for a minimum depth of thirty (30) from a Street, beginning at the applicable Back of Curb at any entry point to the Property and from any Streets and Owner shall maintain any curbside improvements which are part of any municipal or private road right of way as it abuts the Property or any part thereof. Owner shall also provide Landscaping and irrigation for those areas surrounding any Buildings located on the Property. Any private drives, walkways, parking areas, areas between Buildings, storage areas or other areas of use on the Property shall be landscaped, fenced or otherwise made to have a sightly appearance on the Property.

Storage areas that are not enclosed within a building may be covered by gravel, wood chips, or other material approved by the Committee, and shall be maintained weed free with appropriate fencing and landscaping to present a sightly appearance to the surrounding areas. Large permanent equipment or material storage areas which are not paved or improved shall be designed and planned with fencing, landscaping, screening and enclosures as may be appropriate. For example, storage of select fill materials (soils, gravel, wood chips) shall be allowed but shall have three sided enclosures of concrete or masonry for each different material and the enclosure walls shall be finished with architecturally compatible finishes such as pre-cast rock or brick with appropriate colors, architectural quality masonry, stucco or other finish

approved by the Committee. The materials would then be stored wholly within the enclosures and kept organized and cleaned up for an organized and sightly appearance.

All unimproved areas (*i.e.*, areas that are either unpaved, un-built or un-tracked and not within any setback areas described above) shall have either Landscaping and be maintained with an irrigation system or, covered with gravel or wood chips and regularly maintained weed free. Every Building Site shall be landscaped in accordance with plans submitted and approved in writing by the Committee. Because the Property is a large parcel which is expected to be subdivided or have Buildings and Improvements constructed in phases over extended periods of time, it is anticipated that Owner will provide an anticipated building and site plan which may be modified and improved over time as subdivisions occur or Buildings are constructed or planned. Landscaping which is part of the site plan approved by the Committee shall be installed within ninety (90) days after completion of any Building construction or as soon thereafter as weather will permit, and shall be maintained in the manner as outlined below in Section 5.20.

As a requirement of landscaping approval under this Section 5.4, if determined by the Committee, landscaping in the frontscape of a Building Site may be required to display a common theme and style.

Section 5.5 Fences. Fences along Street frontages, other than Landscape decorative fencing, shall be erected behind the landscaped area required in Section 5.4. Fences along Street frontage shall not be designed to completely obstruct views of Buildings unless the Committee agrees that such fencing will enhance the appearance of the Building Site. No chain link fencing of any type or style will be allowed in areas adjacent to Streets. Architectural quality chain link fencing may be used for security fencing of the Property with approval of the Committee, which approval may not be unreasonably withheld or delayed. An example of such fencing may be vinyl coated chain link fencing with vinyl coated privacy slats, using a color which is acceptable with the designs approved by the Committee. Notwithstanding the foregoing, if part or all of a lot or Building Site will be used for outdoor storage of equipment, building materials, business supplies or other such uses and materials, the storage yard areas shall be fenced with a solid fencing, such as solid vinyl, precast concrete, block or other solid fencing approved by the Committee. Any fencing shall be of a color and style to provide a pleasing architectural appearance and quality, compatible and in harmony with neighboring property and with the Building and Improvements planned or constructed on the site.

Section 5.6 Curb Cuts. Unless otherwise required by the Town of Vineyard, curb cuts for driveways shall be a minimum of ten (10) feet from adjacent property lines (except railroad property lines), except for any driveway that is shared by adjacent land owners, in which case decorative landscaping shall be installed to enhance the appearance along the common drives and to make such drives appear planned with common landscape themes and maintenance.

Section 5.7 Signs.

(a) Subject to approval of the Committee, all Signs shall conform to the following general requirements:

- (i) Only a company name and/or company logo shall be permitted,



along with such other identifying features and information as the Committee may permit.

(ii) All illumination shall be provided by a concealed source and all back-lighting shall be contained within the area of the Sign.

(iii) No neon, traveling, flashing, intermittent or similar illumination of any kind shall be permitted.

(iv) All wiring and all appurtenant electrical equipment shall be installed inside the Building, underground or within the Sign.

(v) Signs shall conform to the requirements of all municipal sign ordinances.

(b) During the period of development and prior to the completion of the principal building on each Building Site, the Building Site shall have only one temporary construction sign.

(c) There shall be no more than one sign located in proximity to the primary access point to the Property ("Roadway Sign"), or a lot or parcel within the Property, and no more than one sign on the front surface of each Building within the Property ("Building Mounted Sign"). The Committee shall approve the style, number and locations of such signs and at its discretion may allow for more than one location of any such signs particularly where the Owner may have exposure to more than one public street.

(d) Each Building Site may have directional signs designating parking areas, off-street loading areas, entrances and exits and conveying similar information. All such signs shall conform to the format and specifications agreed upon by the Committee.

(e) The Committee may from time to time make changes or modifications to the above requirements to take into account changes in technology or other considerations deemed by the Committee to be in the best interests of the Property and the Owner.

Section 5.8 Exterior Construction, Materials and Colors. All exterior walls of any Building or office Improvement must be finished with architectural masonry units (not typical cinder block), natural stone, precast concrete (including cast in place concrete tilt-up panels) with coatings or other treatments to simulate natural materials, stucco or brick or glass materials, or their equivalent, along with such other architecturally and aesthetically suitable building materials as shall be approved in writing by the Committee. All finish materials shall be maintainable and sealed as appropriate against the effects of weather and soiling. Color shall be harmonious and compatible with colors of the natural surroundings and adjacent Buildings as determined by the Committee. Aluminum or steel panel buildings will be allowed but all exteriors of such buildings shall be treated or coated to provide the look of natural stone, wood, brick or stucco appearance, or combination thereof. Building exteriors approved for use or similar in appearance to buildings in the Eastlake CCR's will be approved by the Committee subject to architectural review for style and color that presents that is architecturally pleasing.

Storage tanks shall be designed to be as unobtrusive as possible, considering the size and dimensions of such structures. Storage tanks shall use the lowest height profile reasonably possible considering the size of the Property, standard construction techniques, reasonable costs, and shall be placed into the ground as deeply as reasonably possible considering safety, groundwater and geotechnical considerations. Owner may not construct tanks or buildings more than forty feet (40') high on the Property (measured from the predominant elevation of the Property, excluding ditches or drainages) without the written consent of Grantor which may be withheld for any reason.

Section 5.9 Temporary Structures. No temporary Buildings or other temporary structures shall be permitted on any Building Site; provided, however, trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. The location and nature of such structures must be submitted to and approved by the Committee and shall be placed as inconspicuously as practicable, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building(s) in conjunction with which the temporary structure was used.

Section 5.10 Antennas, Aerials and Dishes. Owner may only erect such antennas, aerials or dishes on their Buildings and Improvements as are reasonably required for their own systems use and shall use reasonable efforts to reduce visibility and height of such antennas, aerials and dishes to the extent possible using reasonably available technology. Such equipment shall be reasonably maintained so as to present as slighty appearance as possible. No other such equipment may be maintained by Owner or installed for use of third parties.

Section 5.11 Utilities; Mechanical Equipment.

(a) Except as may otherwise be required under applicable laws or utility company guidelines, all new electrical, gas, telephone, data and water services shall be installed and maintained underground. It is acknowledged that for future operation on the Property, that an electrical substation may be required on the Property. To the extent reasonably practicable, using good site design practices and based on the needs for the facilities, any such electrical substation facility shall be fenced and screened by Buildings or landscaping and shall be approved by the Committee.

(b) Transformers that may be visible from a primary visual exposure area shall be screened with either plantings or a durable non-combustible enclosure (of a design configuration acceptable to local electrical utility). Transformer enclosures shall be designed of durable materials with finishes and colors which are unified and harmonious with the overall architectural theme. "Enclosures" as used herein shall mean a three-sided structure with a gate and without a roof or ceiling.

(c) Exterior-mounted electrical and gas equipment shall be mounted on exposed surfaces only when an interior mounting is impractical. When mounted on the exterior, electrical equipment shall be mounted in a location that is substantially screened from public view as may be reasonably practicable using good site design practices and the needs of the facilities. In no case shall electrical equipment be mounted on the street side or significant exposure side of any Building without the approval of the Committee.

(d) Exterior-mounted electrical equipment and conduits shall be kept to a visible minimum. Where visible, they shall be installed in a neat and orderly fashion and shall be painted to blend with their mounting backgrounds.

(e) Storage tanks, and any other similar structures or equipment placed upon any Building Site shall be reasonably landscaped to complement and improve the public view of such equipment and facilities, which landscaping plans shall be approved in writing by the Committee prior to the construction or erection of said structures or equipment.

Section 5.12 Loading and Servicing Areas. Loading doors, docks, material handling facilities, accessory structures and servicing areas shall be screened, as much as reasonably practical at the discretion of the Committee, to minimize the effect of their appearance from public areas or neighboring sites and from major roadways. Moreover, loading and servicing areas shall be designed as an integral part of the Building architecture, so that the entire loading and servicing operation can be conducted within the confines of any such area. Loading areas shall not encroach into setback areas along street frontages. Off Street loading space shall be designed to include an additional area or means of ingress and egress which shall be adequate for maneuvering. No on-street loading or unloading or parking shall be allowed.

Section 5.13 Garbage and Debris. No refuse, garbage, trash, or debris, grass, shrub or tree clippings, plant waste, or other such waste materials shall be kept, stored or allowed to accumulate, on any Building Site except temporarily within an enclosed structure or container approved by the Committee which is appropriately screened from view, in a manner acceptable to the Committee; except that any refuse or storage container containing such materials and approved by the Committee, may be placed outside at such time as may be reasonably necessary to permit garbage or trash pickup. "Enclosed structure" as that phrase is used herein shall mean a three-sided enclosure with a gate and without a roof or ceiling. The Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the type and appearance of permitted trash receptacles, the screening thereof by fences, walls or otherwise, and the manner of locating the same on the Property.

Section 5.14 Accumulation of Materials; Storage Areas; Equipment and Vehicles. Materials, supplies, merchandise, equipment, company-owned vehicles or similar items shall be stored in a location that shall be screened as much as reasonably practicable from the view of adjacent Buildings, Streets and pedestrian walkways by either a fence, wall, landscaping screen or similar manner which is approved in writing by the Committee. All outdoor storage of materials shall be organized, and kept in a neat and orderly fashion.

Section 5.15 Maintenance of Property. Owner shall at its own expense keep each Building and all Improvements located thereon, including Landscaping, in a clean, safe, attractive and aesthetically pleasing condition, in good order and repair, including and without limitation, (a) painting and repairing and generally maintaining the exterior of all Buildings and other Improvements at such times necessary to maintain the appearance of a first class industrial and business park facility, (b) maintaining (including snow removal) and repairing any parking lot and truck dock areas, road, driveway; storm sewer, utilities, or similar Improvement located within the perimeter of all such Building Sites in a manner and with such frequency as is

consistent with good property management, (c) maintaining and landscaping all Lawns, trees, grass, shrubs, flowers and other Landscaping in accordance with the requirements of these Protective Covenants, (d) maintaining or repairing any utility lines that service any Building or Improvements to the extent such lines are not required to be maintained or repaired by Vineyard Town or any applicable utility company, and (e) cleaning of all glass on any Building at least quarterly. The expense of any maintenance, repairs or landscaping required in this section shall be the sole expense of each individual Owner, and neither the Grantor, nor the Committee, Association or Master Association shall be responsible for any expenses related to any maintenance, repair, landscaping or improvement on any Building Site. Notwithstanding the foregoing, if any Owner fails to properly clean and maintain any Building or Improvement or Landscaping, then, without any duty to do so, and in its absolute discretion, Grantor, or if delegated, the Association or Master Association may, upon thirty days written notice to the Owner, enter into the Building Site and perform maintenance, repairs, cleaning, and Landscape maintenance all at the expense of the Owner. All such costs shall constitute a lien on the Property which may be foreclosed for the benefit of Grantor, or its assignees.

Section 5.16 Sounds. No exterior speaker, horns, whistles, bells or other sound devices, other than devices used exclusively for safety, security, fire prevention or fire control purposes, shall be located or used on any Building Site except to the extent permitted by the Committee.

Section 5.17 Maintenance of Drainage. Any Building Site shall have appropriate provision for water retainage/detention as may be necessary or appropriate for the Property's overall drainage system, as determined in the reasonable judgment of the Committee. The established drainage pattern over any Building Site may not be altered except as approved in writing by the Committee. Each site shall be designed to detain such storm water or other drainage as may be required after considering the capacity of any storm water drainage system within the Property and the Subdivisions. Owner may not discharge into any storm drainage system any sewage, hazardous waste or any other materials not authorized by Vineyard Town and Grantor.

Section 5.18 Water Systems. Owner recognizes that water is available to the Property by and through interlocal agreement with Lindon City and Vineyard Town. Grantor may require water pipelines from Lindon City to be constructed through the Property. Grantor and Owner shall mutually agree on appropriate locations for water lines which will traverse the Property to the Other Property.

Section 5.19 Maintenance of Lawn and Landscaping. Any Lawn and all Landscaping shall be maintained by Owners of the Building Site in substantially the following manner:

Cut Cut all Lawn areas on a regular basis with mowers so as to maintain a manicured appearance.

Trim Trim around all Buildings, trees, poles, fences and other obstacles during such servicing,

Edge Edge all walks, curbs, driveways, and similar areas upon such servicing.

Weed Remove all weeds from bed areas as needed.

Clean Up Remove all grass clippings from walks, drives, and parking areas after performing any maintenance of Landscaping.

Shrub Pruning Prune all shrubbery as needed to maintain and promote a manicured and healthy appearance.

Tree Pruning Prune all trees as required to remove damaged branches, sucker growth, dead wood, and similar matters.

Leaf Removal Collect and remove all fallen leaves.

Parking and

Interior Drives Sweep, power-wash, paint, re-surface, repair as necessary to maintain clean and well maintained appearance.

Section 5.20 Exterior Lighting. All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained in accordance with, plans and specifications approved in writing by the Committee to the end that lighting shall be compatible and harmonious throughout the Property. In general, lighting will be restricted to the Building Site and parking or drive areas where safety and appearance will be enhanced and will not project vertically or off of the Building Site except as approved by the Committee.

Section 5.21 Application of Restrictions. All real property within the Property shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. However, reasonable variations from the strict application of the limitations and restrictions in this Article V in any specific case may be granted by the Committee in accordance with Article VIII in the discretion of the Committee. Any such variance shall not constitute a waiver or estoppel with respect to any of the provisions of this Declaration on any future action by the Committee.

## ARTICLE VI COMMON AREA MAINTENANCE AND CHARGES/RETAINED RIGHT OF WAY

The Property may be assessed an equitable portion of any common area maintenance related to the Property as may be applicable. If additional portions of the Property at some point in time utilize the Private Streets then the Property may be assessed an equitable portion of common area maintenance for such Private Streets, private railroad crossing, signage related to the Subdivisions and other applicable costs and expenses related to the operation of the Association or other commonly used facilities. The Property may, at any time hereafter be added to the Eastlake CCRs for purposes of this Article VI. Notwithstanding the foregoing, for all purposes of this Declaration, the Eastlake CCRs are subordinate and supplemental to this Declaration. To the extent that there is any conflict with or ambiguity between this Declaration and the Protective Covenants established herein and the Eastlake CCRs, the provisions of this Declaration, and the Protective Covenants established herein shall take precedence.

The Subdivisions, in particular Eastlake at Geneva Industrial Business Park Phase 1 was approved based on the retention by Grantor of an emergency access route over and across the Property from 1750 North Street to Pioneer Lane. By this Declaration Grantor expressly reserves an easement and right of way over and across the Property for the benefit of emergency vehicle access and emergency escape for the benefit of all owners of lots within Eastlake at Geneva Industrial Park Phase 1 and otherwise for the benefit of the Other Property. Such easement and right of way shall be permanent and shall run with the land. At any time hereafter

Grantor and Owner shall have the right to designate a specific location of the easement and right of way, or to move the location thereof for the mutual convenience of Grantor and Owner.

## **ARTICLE VII ASSESSMENTS**

Grantor, as the owner of the Property and every part thereof, hereby covenants, and each Owner of the Property or any Building Site, by the acceptance of a Deed therefor, whether or not it be so expressed in the Deed, shall be deemed to covenant and agree with Grantor and/or the Association to pay to Grantor or the Association annual assessments made for the purposes provided in this Declaration, and special assessments for capital improvements other matters as provided in this Declaration, as limited by the provisions of Article VI above. Such assessments shall be fixed, established, and collected from time to time in the manner provided at Article VII of the Eastlake CCRs. The Property shall be deemed added to the Eastlake CCRs for purposes of this Article VII. A Master Association may be substituted in the future for the Eastlake CCRs and the Association, in Grantor's discretion.

## **ARTICLE VIII ZONING AND OTHER RESTRICTIONS**

The Protective Covenants shall not be taken as permitting any action or thing prohibited by zoning laws or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease, that are applicable to the Property. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Protective Covenants shall be taken to govern and control. Any approval of the Association required in this Declaration does not in any way relieve Owner from obtaining approvals or otherwise complying with any laws, rules or regulations required by any governmental body or other person having jurisdiction or other legal rights thereunder.

## **ARTICLE IX APPROVAL OF PLANS; CONSTRUCTION**

Section 9.1. Plans. No exterior construction, exterior reconstruction, or exterior alteration of any Building or other exterior Improvements including Signs may be commenced without written approval by the Association of the plans for such construction or alteration, which approval shall be sought in accordance with the provisions of Article X below. The plans submitted for approval of the Association shall include all plans, specifications, drawings, studies, reports and other materials, both written and otherwise, as the Association may reasonably request in order to grant an informed approval or disapproval in compliance with the terms and provisions of this Declaration. Approval of the plans by the Association may be secured prior to acquisition of Building Site pursuant to the terms of a sales contract.

Section 9.2. Construction. Upon receipt of approval of plans, Owner or Occupant shall diligently proceed with the commencement and completion of all approved construction. Unless work on the approved construction shall be commenced within one (1) year from the date of such approval and diligently pursued to completion thereafter, the approval shall automatically expire unless the Association has given a written extension of time.

Section 9.3. Arbitration. If the Owner or Occupant submits plans for construction of a Building, Improvements, or after construction of a Building and Improvements, such Owner or Occupant submits plans for exterior alteration, addition or exterior reconstruction, and having received a decision of the Committee, feels that said decision is not consistent with the provisions of this Declaration, such Owner or Occupant may submit the decision to determination by arbitration in the following manner:

The party desiring arbitration shall serve upon the Association a written notice naming an arbitrator. Within ten (10) days after the delivery of said notice, the Association shall likewise appoint an arbitrator and notify the party desiring arbitration of such appointment, and if the Association fails within said ten (10) days to so do, the arbitrator appointed by the party desiring arbitration shall proceed in the determination of plan approval and his/her decision as to such approval shall be final. If the Association appoints an arbitrator within the prescribed time, the two arbitrators so appointed shall choose a third arbitrator. If the two arbitrators so chosen shall fail to agree upon a third arbitrator within a reasonable time, such arbitrator shall be appointed, upon application of either party, by any judge of the District Court of Utah County, but such application shall not be made until such party shall have given ten (10) days written notice to the other party of its intention to do so. The board of arbitrators, constituted as aforesaid, shall proceed to determine whether or not the proposed plans shall be approved and the decision of the board, or of any two members thereof, as to such shall be binding upon the parties hereto. All expenses of such arbitration shall be apportioned equally between the parties to the arbitration.

All arbitrators shall be either attorneys having significant experience in real estate development, commercial real estate agents having 10 years or more experience in industrial real estate sales and leasing, architects having at least 5 years experience in industrial and commercial building design, or developers having 10 years experience in commercial and industrial real estate development. In rendering a decision the arbitration panel shall determine whether the decision of the Association or Committee is reasonable under the circumstances, and if so, shall uphold the decision. No decision of the Committee or Association shall be overturned unless it is unreasonable or arbitrary.

The parties shall each bear the cost and expense of any arbitrator selected by them. The two parties shall bear equally the cost of the third arbitrator. If the parties cannot otherwise agree on the rules and procedure for arbitration, they shall follow the rules for the American Arbitration Association for commercial arbitration. Each party may be represented by an attorney at their own expense. All arbitrations shall be held at the offices of the Association in Utah County, Utah unless otherwise agreed. Any decision reached in arbitration shall be binding on the parties and enforceable in a court of law.

## ARTICLE X THE COMMITTEE

### Section 10.1. The Committee.

(a) The Committee is hereby created pursuant to this Declaration, the functions of which shall be to enforce the provisions of this Declaration with specific power to

(a) grant approvals of construction, reconstruction and development of Building Sites and Improvements in accordance with the restrictions, requirements and provisions contained in this Declaration, including without limitation, the right to insure that Improvements on the Property harmonize with existing surroundings and structures on the Property, (b) exercise the discretionary powers of the Committee granted in this Declaration, and (c) grant such other approvals or variances and perform such other functions and duties as may be required by the terms of this Declaration. If rights hereunder are delegated to the Association or Master Association, then the Committee shall be governed by the provisions of the delegated party.

(b) The Committee shall consist of three persons. Until the sooner to occur of 40 years from the date of this Declaration or the date upon which Grantor has sold and conveyed to third parties (as opposed to transferred to another entity or entities controlled by Grantor or Affiliates of Grantor) more than ninety-five percent (95%) of the total acreage contained in the Other Property (hereinafter the "Turnover Date"), Grantor shall have the right and privilege to appoint two members of the Committee. The third member shall be appointed by the Owners. After the Turnover Date, two members of the Committee shall be appointed and elected by majority vote of the Owners in the Property, and the remaining member shall be appointed by Grantor or a Master Association which has been delegated Grantor's authority. If Grantor fails to act or appoint a Master Association prior to the Turnover Date, then Owners shall have power to appoint all Committee members and the rights of Grantor shall lapse.

Unless an association formed by the Owners is then existing, each Owner shall have votes equal to the number of acres existing in the Owner's Building Site within the Property, and a majority vote of all votes attributable to all Owners shall elect member(s) of the Committee authorized for appointment by Owners. Votes shall not be accumulated for the election of members of the Committee. Members shall serve for three year periods, unless earlier removed pursuant to a vote of the Owners. Any person may serve as a member of the Committee and need not be an Owner, or a representative or employee or other associate of an Owner. Meetings of the Owners for the purpose of electing the Committee shall be called by the existing Committee in September every three years. In the absence or failure of the existing Committee members to call such meetings, or if a special meeting is desired by the Owners, Owners owning at least 10 percent of all the total votes in the Property may call a meeting of the Owners for the purpose of electing a new Committee member at any time. Notice of any meeting of Owners, whether given by the Committee or Owners having at least 10% of total votes, shall be given at least 20 days prior to any such meeting by written notice to all Owners at the then address of each Owner on its Building Site, unless the Owner gives another address to the Committee or the Owners for purposes of receiving notice. Said meetings may be held in any location in Utah County, Utah.

(c) Association. If delegated with authority to govern the Committee, an association shall adopt rules and regulations for operation consistent with this Declaration and all rights, privileges and duties of the Committee shall transfer to the association. In all instances involving the actions of the Committee with respect to the Property, Owners shall have the right to appoint at least one member of the Committee, either directly or acting by and through an association until the Turnover Date, and then two members of the Committee as provided above.

Section 10.2. Approval Procedure. Any plan and specifications, or any other matter required by this Declaration to be submitted to the Committee shall be approved or disapproved



by it in writing no later than thirty (30) days after submission. A majority vote of the Committee shall be required to approve or disapprove any plans or specifications or other matter submitted to the Committee. If the Committee fails to respond to a property submitted application for approval of plans and specifications within sixty (60) days of the proper submission of such application, such application shall be deemed approved.

Section 10.3 Standards. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all Improvements within the Property conform to and harmonize with the requirements and restrictions of this Declaration, subject to the rights of the Committee to grant variances and to exercise its discretion under this Declaration.

Section 10.4. Development Guidelines. The Committee may from time to time adopt such "Development Guidelines" as it deems necessary to clarify, amplify upon and further develop the restrictions, guidelines and requirement of this Declaration and to inform Owners and occupants of the standards that will be applied in approving or disapproving matters submitted to the Committee pursuant to the provisions of this Declaration. Such Development Guidelines may amplify but may not be less restrictive than the regulations and restrictions stated in this Declaration, and shall be binding upon all Owners and occupants. Such Development Guidelines may state more specifically the rules and regulations of the Committee with respect to the submission of plans and specifications for approval, the time or times within which such plans or specification must be submitted, and may state such other rules, regulations, policies, and recommendations that the Committee will consider in approving or disapproving proposed construction of or alterations to Buildings and Improvements, or other matters submitted to the Committee pursuant to this Declaration.

Section 10.5. No Liability for Damages. Neither the Committee nor the Grantor, or any of its or their agents, assigns, owners, managers or otherwise, shall be liable for damages by reason of any action, inaction, approval, or disapproval by the Committee with respect to any request made pursuant to this Declaration.

Section 10.6. Payment. Before any application shall be approved by the Committee, the Owner or occupant who submits the plans and specifications for approval shall provide assurance in such form as the Committee shall determine, for the payment or reimbursement to the Committee of its reasonable and actual professional costs (including architectural or legal costs, whether or not such costs are incurred with respect to members of the Committee) incurred as part of the review by the Committee of such plans and specifications.

## ARTICLE XI GENERAL EASEMENTS

Section 11.1 Drainage, Utilities. Grantor hereby reserves easements over the Property for drainage of surface water wherever and whenever reasonably necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that such easements shall terminate as to the Property when the initial principal Building and Landscaping approval for a Building or Improvement has been completed.

Section 11.2 Maintenance and Interference. Grantor and Owner, whichever the case may be, hereby agree to use their best efforts to minimize interference with Grantor, Owner, and Owner's guests and/or invitees in connection with Grantor's use of the easements described in this Article XI.

Section 11.3 Water, Utility and Road Easements. Owner acknowledges that Grantor's development plans for the Other Property will require running a water line from Pioneer Road to a point within Seller's Other Property, or to 1750 North, as Seller may determine, and electrical power lines over, under and across the Property. Owner shall cooperate with Grantor in finding an appropriate location for a water pipeline and electrical lines, as are reasonably requested by Grantor, which lines will be located so as not to unreasonably burden the Property, but will provide such utilities as may be requested by Grantor to Grantor's Other Property in a cost efficient manner.

Owner further acknowledges that the Property is not part of the Eastlake at Geneva Industrial Business Park, Phase 1 and that neither Owner nor its tenants have a right of access to 1750 North. However, it is anticipated that in the future Owner may require such access for development of the Property. To the extent it is reasonably required by Owner to connect to 1750 North in the future, in order to develop the Property, Grantor hereby grants to Owner such rights, including the right to cause the amendment of the Eastlake CCRs to the extent necessary to allow connection to and use of the Private Streets. Such use of the Private Streets shall be subject to Owner agreeing to encumber the Property with the requirements of assessments as required under the Eastlake CCRs, providing for payment of an equitable proportion of the costs of maintenance and replacement of the Private Streets and improvements thereon, including any common areas associated therewith.

Owner further acknowledges that Grantor may be required by Vineyard Town to connect a public roadway or private roadway through the Property as a requirement for continued development of the Other Property. Owner shall cooperate with Grantor in finding an appropriate location for a public or private roadway, as may be reasonably requested by Grantor, which will connect to 1750 North Street, or such other street as the parties may otherwise agree, and located so as not to unreasonably burden the Property but will allow for construction of the roadway in a reasonably cost efficient manner. To the extent that Owner is benefited by any such roadway, Owner shall be required to contribute an equitable share of costs of the roadway at such time as Owner subdivides the Property for further development in the future.

## ARTICLE XII GENERAL

Section 12.1 Owner's Acceptance. Owner by acceptance of a Deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Grantor or a subsequent Owner, shall accept such Deed or other contract subject to each and all of the terms of this Declaration, including without limitation the Protective Covenants. Owner agrees to cause any occupant of its Building or Building Site to agree to be bound by the terms of this Declaration including, without limitation, the Protective Covenants and the payment of common maintenance charges.

Section 12.2 Indemnity for Damages. Owner and any future Owner or occupant in accepting a deed or contract for the Property agrees to indemnify Grantor, the Committee, the Association, and any management company for any damage caused by such Owner or occupant, or the contractor, agent or employees of such Owner or occupant, to all Streets, and to roads, streets, gutters, walkways, or other aspects of public ways, including all surfacing thereon, or to water drainage or storm sewer lines or sanitary sewer lines owned by Grantor, the Association, the Committee or the management company or for which Grantor, the Association, the Committee or management company has responsibility at the time of such damage.

Section 12.3 Limitation of Liability. Each and every Owner or occupant or future Owner or occupant in accepting a Deed or contract for the Property acknowledges and agrees that neither the Grantor, the Association, the Committee, the Management Company nor any of their respective partners, owners managers, officers, directors, employees, agents or affiliates shall be liable to the Owner or occupant or any person acting by, through or under such Owner or occupant (any one such person or entity herein called an "Aggrieved Person") for any injury or damage, including monetary damage, to the business, equipment, merchandise or other property of the Aggrieved Person resulting from any cause, including, but not limited to, claims of breach of fiduciary duty, losses due to mistakes or the negligence of any of the employees, brokers or other agents, of the Grantor, the Association, the Committee or any management company or otherwise, except if and to the extent that such act or omission is grossly negligent or willful. Except as specifically provided in this Declaration, neither Grantor nor the Association, the Committee, nor any management company shall be liable to any Owner or occupant for any claims, damages, injury or death, whether to a Building Site or Building, personal property, equipment or Improvements, interruption of services or for any acts or omissions of Grantor or the Association, the Committee or the management company related to or arising out of its or their duties, rights or responsibilities under this Declaration so long as such act or omission is done in good faith and is not a result of gross negligence or willful acts.

Section 12.4 Enforcement. Enforcement of the provisions of this Declaration may be made by Grantor, the Association, the Committee or the management company or any Owner affected thereby, and shall be by any appropriate proceeding at law or in equity against any Owner or occupant, person, corporation, trust or other entity violating or attempting to violate said provisions either to restrain such violation enforce liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any. lien or charge arising by virtue thereof. Neither Grantor, the Association, the Committee or the management company shall be liable for the enforcement of, or failure to enforce said provisions, and failure of Grantor, the Association, the Committee or the management company or any Owner or occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 12.5 Severability. Every one of the provisions of this Declaration, including the Protective Covenant is hereby declared to be independent of, and severable from the rest of the provisions and of and from every combination of such provisions. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or Protective Covenants, which shall remain in full force and effect.

Section 12.6 Captions. The captions preceding the various sections paragraphs and

subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Declaration. Wherever and whenever applicable, the singular form of a word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

Section 12.7 Duration, Modifications and Termination. The conditions, restrictions, covenants, easements and reservations set forth in this Declaration shall run with and bind the land within the Property and shall be and remain in effect, and shall inure to the benefit of and be enforceable by, through or under Grantor or the Owner of any portion of the Property, subject to and pursuant to the terms of this Declaration, their heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded with the Utah County Recorder after which time these Protective Covenants shall automatically renew for a period of ten (10) years unless Grantor, or the Association if delegated this right, and Owner jointly elect to terminate on or before the end of the term. Thereafter, at the expiration of the first 10-year extension term, unless Grantor, or Association if delegated this right, and Owner elect to terminate this Declaration and Protective Covenants, this Declaration shall automatically be renewed for successive ten (10) year terms, with the same right in the named parties to terminate at the end of each successive 10-year term.

Section 12.8 Assignability. Grantor may assign all of its rights and obligations herein to any person or entity to which Grantor simultaneously conveys its interest in a substantial portion of the Subdivisions or Other Property, or to the Association or to a Master Association. The foregoing assignment and assumption, shall be evidenced by a signed and acknowledged written declaration recorded in the office of the Recorder of Utah County. Written notice of such assignment shall be given to Owner. By such assignment and assumption, the grantee thereof shall be conclusively deemed to have accepted such assignment and shall thereafter have the same rights and be subject to the same obligations as are given and assumed by Grantor herein. Upon such assignment, Grantor shall be released from all obligations which shall arise thereafter, but not from obligations arising prior to such assignment.

Section 12.9 Amendment. For so long as Grantor owns adjacent lands, or more than 5% of the lands within the Subdivisions and Other Property, Grantor shall have the right to amend this Declaration so long as such amendment does not materially impair a substantive right already received or used by a then Owner.

Section 12.10 Default. If Owner fails to perform any obligation under this Declaration and such failure continues for a period of thirty (30) days after written notice of such failure is given to such Owner by Grantor or the Association, or if the performance of such obligation, other than a failure to pay Assessments or other sums when due, would reasonably require more than thirty (30) days, if such Owner fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Grantor or Association may, on written notice to such Owner, perform such obligation in the stead of such Owner, or exercise any other right or remedy existing at law or in equity, The Grantor or Association shall be reimbursed by such Owner on demand for all costs and expenses (including attorney fees and costs) incurred in connection with such performance or enforcement of this Declaration, both before and after judgment, with interest on all such costs and expenses, at the rate of eighteen percent (18%) per annum from the date incurred until paid.

Section 12.11 Environmental Covenants. Owner acknowledges that certain restrictive covenants have been filed and recorded against part or all of the Property in addition to the Eastlake CCRs, dealing specifically with environmental conditions and restrictions in respect to the Property (herein the "Property Environmental Covenants"). Grantor may require any Owner to execute an acknowledgement that Owner is subject to and agrees to comply with such Property Environmental Covenants. Notwithstanding anything herein to the contrary or in any other document or agreement, Grantor, Utah Department of Environmental Quality ("UDEQ"), and any municipality having authority or jurisdiction over the Property ("City"), may at any time, and from time to time, enforce the Property Environmental Covenants against any Owner, and failure to enforce the Property Environmental Covenants shall not constitute a waiver of any breach, default or failure to abide by the Property Environmental Covenants. Grantor, UDEQ and City shall have the right, at any time upon reasonable notice, to inspect any Building or Building Site to determine compliance by Owner with the Property Environmental Covenants. Grantor reserves on its behalf and on behalf of UDEQ, the right to enter upon any Building Site and any Building, upon reasonable notice, to conduct any environmental remediation activity, if required by UDEQ. In no case shall such inspection or entry unreasonably disrupt Owner's business operations on a Building Site, and Grantor agrees to indemnify Owner against any damage or injury caused as a result of Grantor's negligence or willful misconduct. The breach of Owner of any Property Environmental Covenant may cause Owner to be liable for and assume all responsibility for environmental conditions which exist as of the date of acquisition or occupancy. Notwithstanding the foregoing, Grantor agrees that unless Owner breaches any such Property Environmental Covenant, Owner shall not be liable for, nor shall Grantor seek contribution from Owner for, any environmental remediation that may be necessitated on the Property with respect to any contamination existing as of the date of acquisition of the Property by Owner.

Section 12.12 Venue, Jurisdiction. Any action or proceeding brought to enforce the Protective Covenants and any dispute in relation to these Protective Covenants, including any arbitration award, by or against the Association, Grantor, or Owner or occupant shall be brought solely within the District Courts of Utah County, Utah. Each of the Association, Grantor, Owner and occupant hereby submits itself to the jurisdiction of said Courts.

Section 12.13 Approval by Vineyard Properties of Utah, LLC. By signing this Declaration, Vineyard Properties of Utah, LLC acknowledges, approves and accepts the Declaration as binding on the Property.

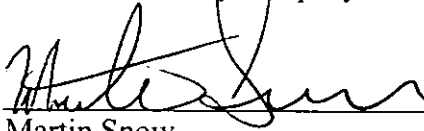
IN WITNESS WHEREOF, Grantor and Owner have caused this instrument to be signed by duly authorized persons on the date first above written.

**Vineyard Industrial, LLC**  
a Utah limited liability company

By: \_\_\_\_\_

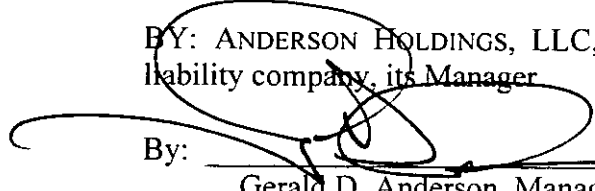
Gerald D. Anderson, Manager

APPROVED AS TO FORM:  
**Vineyard Properties of Utah, LLC**  
a Utah limited liability company

By:   
Martin Snow  
Its: Manager

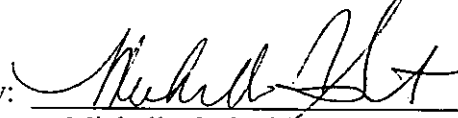
**ANDERSON GENEVA, LLC,**  
a Utah limited liability company

BY: ANDERSON HOLDINGS, LLC, a Utah limited liability company, its Manager

By:   
Gerald D. Anderson, Manager

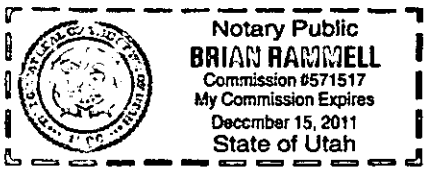
**ICE CASTLE RETIREMENT FUND, L.L.C.,**  
a Utah limited liability company


BY: 1031 INTERMEDIARY SERVICES, INC.,  
a Utah corporation, its Sole Member

By:   
Michelle C. Smith, President

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

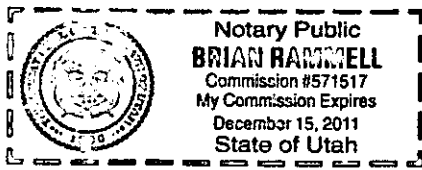
The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of November, 2009, by Gerald D. Anderson, as Manager of VINEYARD INDUSTRIAL, LLC, a Utah limited liability company, for and on behalf of said Grantor.




  
\_\_\_\_\_  
Notary Public

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

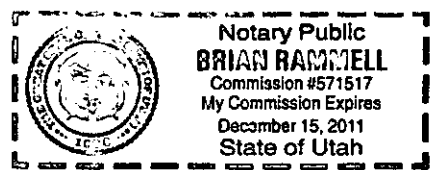
The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2009, by Martin Snow, as Manager of VINEYARD PROPERTIES OF UTAH, LLC, a Utah limited liability company, for and on behalf of said party.

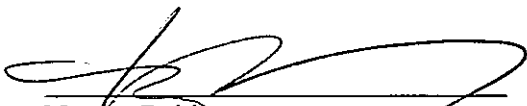


  
\_\_\_\_\_  
Notary Public

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

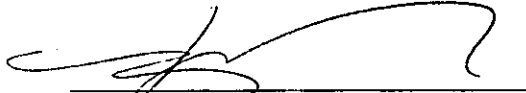
The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of November, 2009, by Gerald D. Anderson, as Manager of ANDERSON HOLDINGS, LLC, a Utah limited liability company, the Manager of ANDERSON GENEVA, LLC, a Utah limited liability company, for and on behalf of said Grantor.

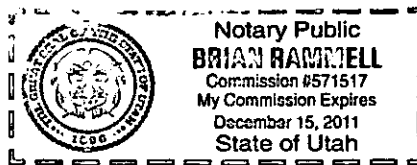


  
\_\_\_\_\_  
Notary Public

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

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of November, 2009, by Michelle C. Smith, as President of 1031 Intermediary Services, Inc., a Utah corporation, the sole Member of Ice Castle Retirement Fund L.L.C., for and on behalf of said Grantor.

  
\_\_\_\_\_  
Notary Public





**Attachment A**  
Legal Description to  
CC&Rs for EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 2

Lots 3, 7, 8 and 9, EASTLAKE AT GENEVA, INDUSTRIAL BUSINESS PARK PHASE 2 AMENDED 2, according to the official plat thereof as recorded in the office of the Utah County Recorder. Parcel Identification Numbers 38-431-0003, 38-431-0007, 38-431-0008 and 38-431-0009.

Lot 4, EASTLAKE AT GENEVA, INDUSTRIAL BUSINESS PARK PHASE 2 AMENDED 2, according to the official plat thereof as recorded in the office of the Utah County Recorder. Parcel Identification Number 38:431:0004.

**Attachment B**  
 Legal Description to  
 CC&Rs for EASTLAKE AT GENEVA INDUSTRIAL BUSINESS PARK, PHASE 2

UTAH COUNTY TAX PARCELS NUMBERED AS FOLLOWS:

17-019-0011, 17-026-0002, 38-424-0001, 38-424-0002, 38-424-0007, 38-424-0012, 38-424-0020, 38-424-0021, 38-424-0022, 38-424-0023, 38-425-0001, 38-425-0002, 38-425-0004, 38:431:0001, 38:431:0002, 38:431:0004, 38:431:0010, 38:431:0011, 38:431:0012, 38:431:0013.

SURVEYED TRACT A

That portion of Section 6, 7, 8 & 18, Township 6 South, Range 2 East, Salt Lake Meridian, Utah County, Utah, more particularly described as follows:

Beginning at the Southwest corner of said Section 8;

thence North 89°25'01" East 2643.06 feet along section line to the westerly right of way line of the Denver and Rio Grande Railroad;

thence North 30°04'07" West 3961.57 feet along said railroad right of way to a curve to the right having a radius of 12555.74 feet, a central angle of 02°48'15" and a chord that bears North 28°39'59" West 614.47 feet;

thence along said curve and said railroad right of way, a distance of 614.53 feet;

thence North 27°15'52" West 4486.96 feet along said railroad right of way to a point on the North line of the South one-half of said Section 6;

thence South 89°37'51" West 790.95 feet along quarter section line to the UTAH LAKE MEANDER LINE described in Entry No. 94662:2001 of the county records;

thence along the UTAH LAKE MEANDER LINE through the following 7 calls, to-wit:

- South 04°54'22" East 970.93 feet;
- South 11°31'05" West 1761.44 feet;
- South 08°31'48" West 351.11 feet;
- South 08°52'57" East 1042.47 feet;
- South 04°32'46" West 1491.41 feet;
- South 07°23'30" East 1181.71 feet;
- South 05°24'11" East 733.27 feet to the east line of a County Road, Deed No. 5;

thence South 29°19'00" East 37.25 feet along said County Road;

thence South 09°06'00" East 600.59 feet along said County Road to the North line of said County Road;

thence South 89°59'38" East 2079.00 feet along said County Road;

thence North 68°49'00" East 372.96 feet to a point on the Section line between said Sections 7 and 8;

thence South 00°09'34" East 27.74 feet along section line to the POINT OF BEGINNING.

Containing 24475613 square feet or 561.883 acres, more or less.

SURVEYED TRACT B

That portion of Section 5, 6, 7, 8 & 17, Township 6 South, Range 2 East, Salt Lake Meridian, Utah County, Utah, more particularly described as follows:

Commencing at the East quarter corner of said Section 5; thence South  $89^{\circ}39'23''$  West 939.43 feet [REC S  $89^{\circ}32'30''$  E 938.64 FEET] along quarter section line to a point on the west right of way line of the Union Pacific Railroad the POINT OF BEGINNING;

thence North  $07^{\circ}47'29''$  West 1066.73 feet along said railroad right of way;

thence South  $82^{\circ}12'31''$  West 50.00 feet;

thence North  $07^{\circ}47'29''$  West 85.00 feet;

thence North  $57^{\circ}33'44''$  West 346.15 feet;

thence South  $89^{\circ}29'57''$  West 1251.00 feet to the Southwest corner of the Northwest quarter of the Northeast quarter of said Section 5;

thence South  $89^{\circ}29'57''$  West 660.00 feet;

thence North 436.52 feet;

thence South  $89^{\circ}52'18''$  West 1683.83 feet;

thence North  $89^{\circ}47'50''$  West 307.55 feet to a point on the section line between said Sections 5 and 6;

thence South  $00^{\circ}44'53''$  East 810.62 feet along section line;

thence South  $89^{\circ}15'09''$  West 66.00 feet to the centerline of an existing drainage canal;

thence along said drainage canal through the following 12 calls, to-wit:

North  $29^{\circ}47'33''$  West 49.52 feet;

North  $18^{\circ}56'23''$  West 78.88 feet;

North  $10^{\circ}22'16''$  West 65.06 feet to a curve to the left having a radius of 9.66 feet, a central angle of  $79^{\circ}23'15''$  and a chord that bears North  $50^{\circ}03'53''$  West 12.34 feet;

along said curve, a distance of 13.38 feet;

North  $89^{\circ}45'30''$  West 130.07 feet;

North  $63^{\circ}27'48''$  West 136.12 feet;

North  $55^{\circ}49'59''$  West 154.97 feet;

North  $85^{\circ}44'08''$  West 160.51 feet;

North  $86^{\circ}48'30''$  West 285.85 feet;

North  $78^{\circ}38'52''$  West 218.84 feet;

North  $57^{\circ}56'01''$  West 111.92 feet;

North  $14^{\circ}20'07''$  West 65.48 feet;

thence North  $89^{\circ}51'28''$  West 1066.60 feet to a point on the Easterly line of the Denver and Rio Grande

Railroad and a point on a non-tangent curve to the right having a radius of 8241.81 feet and a chord that bears South 28°22'50" East 761.61 feet;

thence along said railroad right of way and curve, a distance of 761.88 feet to a point on the right of way of a rail spur and on a non-tangent curve to the left having a radius of 938.84 feet and a chord that bears South 66°21'52" East 764.96 feet;

thence along said curve, a distance of 787.88 feet;

thence North 23.50 feet;

thence North 89°34'54" East 1265.26 feet to a point on a non-tangent curve to the right having a radius of 985.03 feet and a chord that bears South 86°18'06" East 141.41 feet;

thence along said curve, a distance of 141.53 feet to a compound curve to the right having a radius of 984.82 feet, a central angle of 08°14'02" and a chord that bears South 78°04'07" East 141.41 feet;

thence along said curve, a distance of 141.53 feet;

thence South 73°57'06" East 327.88 feet to a curve to the left having a radius of 904.89 feet, a central angle of 16°27'00" and a chord that bears South 82°10'36" East 258.91 feet;

thence along said curve, a distance of 259.80 feet;

thence South 00°34'09" East 80.00 feet to a point on a non-tangent curve to the right having a radius of 984.88 feet and a chord that bears North 86°17'59" West 141.38 feet;

thence along said curve, a distance of 141.51 feet; thence continue westerly along said curve through a central angle of 08°13'56", a distance of 141.51 feet;

thence North 73°57'06" West 327.88 feet to a point on a non-tangent curve to the left having a radius of 904.11 feet and a chord that bears North 78°04'08" West 129.88 feet;

thence along said curve, a distance of 129.99 feet to a compound curve to the left having a radius of 904.91 feet, a central angle of 08°13'50" and a chord that bears North 86°18'11" West 129.88 feet;

thence along said curve, a distance of 129.99 feet;

thence South 89°34'54" West 1265.28 feet;

thence North 00°25'06" West 23.50 feet to a point on a non-tangent curve to the right having a radius of 971.86 feet and a chord that bears North 69°19'24" West 699.57 feet;

thence along said curve, a distance of 715.63 feet to a point on the Easterly line of the Denver and Rio Grande Railroad right of way;

thence along said railroad right of way through the following 3 calls, to-wit:

South 27°15'52" East 5261.68 feet to a curve to the left having a radius of 12455.74 feet, a central angle of 02°48'15" and a chord that bears South 28°40'00" East 609.57 feet;

along said curve, a distance of 609.64 feet;

South 30°04'07" East 9286.89 feet to a point on the West right of way line of State Highway No. 114;

thence North 00°25'44" West 2367.79 feet along said highway right of way to a fence corner;

thence along an existing fence line through the following 11 calls, to-wit:

- South 89°35'13" West 260.92 feet;
- North 03°49'36" East 106.21 feet;
- North 15°42'50" East 74.21 feet;
- North 04°18'29" East 43.84 feet;
- North 63°02'16" West 18.38 feet;
- North 03°37'44" East 362.19 feet;
- North 84°54'53" East 18.18 feet;
- North 02°55'15" West 39.03 feet;
- North 89°51'49" East 65.96 feet;
- North 89°31'52" East 106.34 feet;
- North 88°41'52" East 30.76 feet to a point on said highway right of way;

thence North 00°25'44" West 1586.43 feet along said highway right of way to section line;

thence North 89°26'03" East 67.90 feet along section line to the Southeast corner of said Section 8;

thence North 89°26'03" East 36.39 feet to the west right of way line of the Union Pacific Railroad;

thence North 07°47'29" West 4820.78 feet along said railroad right of way;

thence South 82°30'21" West 149.03 feet along a fence extended;

thence North 07°57'36" West 35.24 feet along the east side and east side extended of an existing substation building;

thence South 82°13'39" West 108.33 feet along the south side of a garage;

thence North 11°59'48" West 25.69 feet to a fence;

thence along said fence through the following 12 calls, to-wit:

- North 14°56'37" West 283.94 feet;
- South 83°36'20" West 29.09 feet;
- North 20°34'54" West 280.71 feet;
- North 14°56'19" West 1448.27 feet;
- North 08°15'56" West 136.96 feet;
- North 07°27'14" West 69.61 feet;
- North 82°14'36" East 53.65 feet;
- North 03°18'46" West 106.60 feet;
- North 10°55'05" East 92.03 feet;
- North 25°14'35" East 120.70 feet;

North 40°54'42" East 377.48 feet;

North 86°07'56" East 126.24 feet;

thence North 07°47'29" West 422.23 feet to the POINT OF BEGINNING.

Containing 48642822 square feet or 1116.686 acres, more or less.

**LESS AND EXCEPTING THE FOLLOWING PARCELS OF LAND:**

Lots 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, Eastlake at Geneva Industrial Business Park, Phase 1.

Lot 3, Eastlake at Geneva Industrial Business Park, Phase 3.

Lots 3, 4, 5, 6, 7, 8, and 9, Eastlake at Geneva Industrial Business Park, Phase 2, Amended 2.