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1 thru 5 - Layton Crossing North

When Recorded Return to:
Read R. Hellewell
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111-1004

10-236+lots

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OCT 22 2002

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DECLARATION
OF
COVENANTS, CONDITIONS AND GRANT OF EASEMENTS
FOR
LAYTON CROSSING NORTH

July 1, 2002

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I-Definitions	2
1.1 Assessments	2
1.2 Building	2
1.3 Building Footage	2
1.4 City	2
1.5 Committee	2
1.6 Common Areas	2
1.7 Common Expenses	2
1.8 Common Facilities	2
1.9 Declarant	3
1.10 Declaration	3
1.11 Default Rate	3
1.12 Easement or Easements	3
1.13 General Assessment	3
1.14 Improvements	3
1.15 Interest Rate	3
1.16 Manager	3
1.17 Mortgage	3
1.18 Mortgagee	3
1.19 Occupant	3
1.20 Owner	3
1.21 Parcel	4
1.22 Primary Ground Lease	4
1.23 Plat	4
1.24 Project	4
1.25 Project Signs	4
1.26 Property	4
1.27 Reimbursement Assessments	4
1.28 Site Plan	4
1.29 Subtenant	4
1.30 Supplemental Assessments	4
1.31 Taxes	4
1.32 Total Building Footage	4
ARTICLE II-Submission	5
2.1 Declaration	5
2.2 Covenants to Run With Land	5
2.3 Enforcement	5
ARTICLE III-General Provisions	5
3.1 Expansion of Project	5
3.1.1 Manner of Annexation	5
3.1.2 Effect of Recording	6
3.2 Site Plan	6
3.3 Barriers Restricted	6
3.4 Common Areas and Common Facilities	6

3.5	Use of Common Areas	6
3.6	Parking and Associated Areas	7
3.7	Lighting	7
3.8	No Changes in Traffic Patterns	7
3.9	Right to Close Common Areas	7
3.10	Common Area Liability Insurance	7
3.11	Taxes	8
3.12	Rules and Regulations	8
3.13	Maintenance of Other Improvements	8
3.14	Compliance with Law	8
3.15	Nuisances	8
3.16	Utilities	8
3.17	No Subdivision of Parcel	8
3.18	Condemnation	8
	3.18.1 Proceeds	9
3.19	Damage or Destruction of Improvements	9
ARTICLE IV-Management Committee		9
4.1	The Committee	9
4.2	Voting	9
4.3	Organization	10
4.4	No Personal Liability; Indemnification	10
ARTICLE V-Rights, Duties and Obligations		10
5.1	Management of Common Areas	10
5.2	Allocation of Taxes	11
5.3	Project Signs	11
5.4	Enforcement of Rights	11
5.5	Implied Rights	11
ARTICLE VI-Assessments		11
6.1	Payment of Assessment	11
6.2	Apportionment	12
	6.2.1 Other Owners	12
6.3	Annual Budget	12
6.4	General Assessment	12
	6.4.1 Notice	13
	6.4.2 Payment	13
6.5	Supplemental Assessments	13
6.6	Reimbursement Assessment	13
6.7	Collection of Assessments	14
6.8	Notice of Unpaid Assessment	14
6.9	Remedies to Enforce Assessments	14
6.10	Lien for Assessments	14
6.11	Priority of Lien; Liability of Owner	15
6.12	Certificate of Assessment	15
6.13	Notice and Opportunity to Cure	15
6.14	No Avoidance	15
6.15	Accrual of Interest	15

6.16	No Offset	16
ARTICLE VII-Easement		
7.1	In General	16
7.2	Easement for Use of the Common Areas	16
7.3	Public Utilities Easement	17
7.4	Sign Easements	17
7.5	Access to Perform Duties	17
7.6	Extension of Easement	18
7.7	No Public Dedication	18
ARTICLE VIII-Mortgagee Protection		
8.1	Mortgagee Protection	18
8.2	Notice of Noncompliance to Mortgagee	18
8.3	Priority of Assessment Lien	18
8.4	Financial Information	19
8.5	Article Supersedes Others	19
8.6	Amendment to Article	19
8.7	Notices to Mortgagee	19
ARTICLE IX-Consent of Trust		
9.1	Submission of Fee Ownership to Declaration	19
9.2	Covenants to Run With Land	19
9.3	Limitation on Termination	20
ARTICLE X-Miscellaneous Provisions		
10.1	Notices	20
10.2	Amendment	20
10.3	Amendment by Declarant	20
10.4	Duration	21
10.5	No Merger	21
10.6	Assignment of Declarant's Rights and Remedies	21
10.7	Not a Partnership	21
10.8	Violation Creates Nuisance	22
10.9	Violation of Law	22
10.10	No Third Party Beneficiary	22
10.11	Words of Conveyance	22
10.12	Liberal Interpretation	22
10.13	Gender and Number	22
10.14	Captions	22
10.15	Invalidity of Provision	22
10.16	Exhibits	22
10.17	Governing Law	23
EXHIBIT A:	Legal Description	
EXHIBIT B:	Site Plan	
EXHIBIT C:	Legal Description - Additional Property	

**DECLARATION
OF
COVENANTS, CONDITIONS AND GRANT OF EASEMENTS
FOR
LAYTON CROSSING NORTH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND GRANT OF EASEMENTS FOR LAYTON CROSSING NORTH (the "Declaration") is made and entered into the 1st day of July, 2002 by JT LAYTON CROSSING NORTH, L.C., a Utah limited liability company ("Declarant"), in contemplation of the following facts and circumstances:

A. This Declaration contains covenants, conditions, restrictions, easements and other provisions which from and after the date of the recording of this Declaration in the official records of the Davis County Recorder, State of Utah, shall encumber the real property located in Davis County, State of Utah which is specifically described on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Property").

B. Title to the Property is vested in Johnny E. Willis, Trustee of the Laura Allen and Parley Green Charitable Remainder Annuity Trust dated January 31, 2001 (the "Trust") and the Trust has executed this Declaration to evidence its consent that the Property be subject to the provisions of this Declaration.

C. Declarant is entitled to occupy the Property as the tenant under and pursuant to the terms and conditions of that certain Ground Lease dated March 5, 2001 (the "Primary Ground Lease") and the recording of this Declaration is contemplated and authorized under the terms and conditions of the Ground Lease.

D. The Property is being developed as a commercial shopping center known as Layton Crossing North which may from time to time be referred to herein as the "Project." Declarant desires to adopt this Declaration to establish covenants, conditions, restrictions, easements and other provisions and to provide for the common management and operation of the Project, to place certain use restrictions on the Property and to protect and preserve the value of the Project and the improvements which are intended to be constructed thereon.

NOW, THEREFORE, Declarant, as evidenced by its execution of this Declaration, does hereby declare that the Property, as defined and described herein, shall be held, sold, conveyed, transferred, leased, subleased, used and occupied subject to the covenants, conditions, restrictions, easements and other provisions set forth herein, which covenants, conditions, restrictions, easements and other provisions shall run with the Property and all portions thereof and shall be binding upon all parties having or acquiring any right, title or interest in and to all or any portion of the Property, and the respective heirs, successors and assigns of such parties.

ARTICLE I

Definitions

Unless the context clearly indicates otherwise, certain terms used in this Declaration shall have the meanings set forth in this Article I. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1 Assessments shall mean General Assessments, Supplemental Assessments and Reimbursement Assessments.

1.2 Building shall mean a structure built on any portion of the Project for permanent use, including, but not limited to, buildings, parking structures, outside platforms and docks, canopies, enclosed atriums, malls or porches.

1.3 Building Footage for each respective Parcel shall mean the total square footage contained within the Building or Buildings constructed on that Parcel as measured from outside wall to outside wall and not including basements or mezzanines, but including multiple stories or levels.

1.4 City shall mean Layton City, a municipal corporation of the State of Utah.

1.5 Committee shall mean the management committee appointed by the Owner or Owners of the Property which shall be responsible for the management of the affairs of the Project.

1.6 Common Areas shall mean all areas within the Project which are not within a building, as generally shown on the Site Plan referred to in Section 1.28; provided, however, that Common Areas shall not include any portion of any (i) Building, (ii) landscaping or sidewalks located immediately adjacent to a Building, (iii) any trash enclosures, (iv) any sign which is not used to advertise the Project generally or all Occupants, and/or (v) any other Improvements restricted for exclusive use of or for the benefit of any Occupant. Except where the context shall require otherwise, the term Common Areas shall include all Common Facilities.

1.7 Common Expenses shall mean any and all costs and expenses incurred by the Manager in the performance and preservation of the rights, duties and obligations of the Manager in the maintenance of the Common Areas and Common Facilities, including, but not by way of limitation, parking areas, landscaped areas and internal circulation drives, as well as parking lot lighting and the maintenance of Project Signs. There shall be included in Common Expenses a reasonable percentage of all other expenses as compensation to the Manager, but such compensation shall not exceed fifteen percent (15%) of all Common Expenses, excluding management fees, insurance premiums and real property taxes to the extent that same are separately billed or assessed to an individual parcel and the cost of same is merely passed through to an Owner for payment.

1.8 Common Facilities shall mean all improvements located upon the Common Areas including, without limitation, lighting systems, traffic or directional signs, Project Signs, sprinkler and irrigation systems, and other facilities used in connection with the operation or management of the Project. Common Facilities shall also include any and all equipment which shall be leased, owned or used by the Manager in the maintenance of the Project.

- 1.9 Declarant shall mean JT Layton Crossing North, L.C., a Utah limited liability company.
- 1.10 Declaration shall mean this Declaration of Covenants, Conditions and Grant of Easements for Layton Crossing North.
- 1.11 Default Rate shall mean that rate of interest which shall be determined in accordance with the provisions of Section 6.15 and which shall be required to be paid in accordance with the provisions of this Declaration.
- 1.12 Easement or Easements shall mean any easement or, as the context shall require, all easements (i) granted pursuant to the provisions of this Declaration, (ii) set forth on the Plat and/or Site Plan, or (iii) to which the Property is subject pursuant to documents which have been or will be recorded with the Davis County Recorder, State of Utah, including a subdivision plat.
- 1.13 General Assessment shall mean the share of the Common Expenses which are to be paid by each Owner pursuant to Section 6.4 hereof.
- 1.14 Improvements shall mean and include all Buildings and other improvements, made to or constructed upon any portion of the Project and shall include, by way of explanation and not by way of limitation, all Buildings, driveways, sidewalks, parking areas, parking structures, curbs, gutters, retaining walls and utilities.
- 1.15 Interest Rate shall mean that rate of interest which shall be determined in accordance with the provisions of Section 6.15 and which shall be required to be paid in accordance with the provisions of this Declaration.
- 1.16 Manager shall mean the Committee or such party hired by the Committee to perform management functions related to the operation and maintenance of the Project.
- 1.17 Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Parcel or any part or interest in the Property is encumbered, including specifically a leasehold mortgage. No Mortgage executed by an Owner or Lessee of a Parcel shall be construed to constitute a lien or other encumbrance upon any other Parcel or the Common Areas.
- 1.18 Mortgagee shall mean any person or entity named as the mortgagee or beneficiary under a Mortgage or any successor in interest to such person or entity.
- 1.19 Occupant shall mean any party, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership or association which has purchased, leased, rented or otherwise acquired the right to occupy and use any Building or any portion thereof, whether or not such right is exercised. Unless the context shall otherwise require, the term Occupant shall include Subtenants.
- 1.20 Owner shall mean any party, including the Trust, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership or association, which holds in fee title, the rights and incidents of ownership of real property in the State of Utah as to a Parcel within the Project as evidenced in the official records of Davis County, State of Utah. So long as the "Primary Ground Lease" shall remain in effect, then the tenant/lessee under said ground lease shall be deemed to be the Owner for

purposes of this Declaration, subject always to the terms of such ground lease. The term "Owner" shall not refer to any party that shall have such interest solely as security for performance of any obligation, including a Mortgage.

1.21 Parcel shall mean each portion of the Project which has been designated on the Plat as a legal lot which may be separately transferred or conveyed under the laws of the State of Utah.

1.22 Primary Ground Lease shall mean that certain Ground Lease dated March 5, 2001 wherein the Trust is the Landlord and JT is the Tenant.

1.23 Plat shall mean the plat of the Property which has been prepared, submitted and approved in accordance with applicable ordinances of the City and which shall, either prior to or subsequent to the recording of this Declaration, be recorded in the official records of Davis County, State of Utah.

1.24 Project shall mean the Property, together with the Improvements, the Common Areas, and the Common Facilities, which are now located upon or may in the future be located upon the Property and which shall collectively be commonly known as Layton Crossing North.

1.25 Project Signs shall mean signs located on the Common Areas which advertise the business of more than one Occupant.

1.26 Property shall mean the real property described in recital Paragraph A, less any portion thereof that shall be dedeed or otherwise dedicated to the City for public use.

1.27 Reimbursement Assessments shall mean amounts required to be repaid by an Owner pursuant to Section 6.6 hereof.

1.28 Site Plan shall mean the graphic representation of the Project attached hereto as Exhibit "B" and incorporated herein by reference, subject to the provisions of Section 3.2.

1.29 Subtenant shall mean the party which shall be the tenant/lessee under a lease or other agreement which provides for occupancy of a Parcel executed by an Owner, as the landlord/lessor therein, in conjunction with a Parcel and/or any Buildings constructed on the Parcel.

1.30 Supplemental Assessments shall mean the share of any additional assessment levied in accordance with provisions of Section 6.5 hereof which is to be paid by each Owner.

1.31 Taxes shall mean all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or public authority against or upon the Property and/or Improvements.

1.32 Total Building Footage shall mean the sum of the Building Footage for all Parcels within the Project.

ARTICLE II

Submission

2.1 Declaration. Declarant hereby declares that the Property and any and all Improvements that shall at anytime be located upon any portion of the Property shall be held, sold, conveyed, transferred, designed, constructed, operated, maintained, leased, subleased and occupied subject to the easements, covenants, conditions and restrictions set forth in this Declaration and which are for the purpose of establishing common areas, mutual easements, covenants and restrictions which shall provide for the common management and operation of certain portions of the Project, to place certain use restrictions on the Property and to protect and preserve the value of the Project.

2.2 Covenants to Run With Land. This Declaration and all of the easements, covenants, conditions, restrictions and other provisions contained herein are intended to be, and shall constitute covenants which shall run with the land and which shall be binding upon and shall inure to the benefit of Declarant, each respective Owner, each Subtenant, each Occupant and any other party which has or may acquire any interest in or to any portion of the Project and each respective grantee, transferee, heir, devisees, personal representatives and successors and assigns thereof. Any party which may acquire an interest in any portion of the Project, or which may occupy any portion of the Project, shall be deemed to consent and agree to be bound by the Declaration and all of the easements, covenants, conditions, restrictions and other provisions herein contained.

2.3 Enforcement. Unless otherwise specifically set forth herein, Declarant, any Owner, any Occupant or any other party, who is specifically benefitted under the express terms of this Declaration, shall have the right to enforce, by any proceeding at law or in equity, all easements, covenants, conditions, restrictions, liens, charges, rights and/or duties now or hereafter imposed by the provisions of this Declaration. Failure of Declarant, any Owner, any Occupant or other specified party to enforce any easement, covenant, condition, restriction, lien, charge, right and/or duty contained herein on any one or more occasion shall not be deemed a waiver of the right to do so on any subsequent occasion.

ARTICLE III

General Provisions

3.1 Expansion of Project. Declarant (joined by the owner of the real property to be annexed if other than Declarant) shall have the sole right, but not the obligation, to bring within the scheme of this Declaration the additional real property described on Exhibit "C" (the "Additional Property"). Such right may be exercised by Declarant at any time and may be accomplished without the consent or signature of any Owner, Subtenant, Occupant or Mortgagee or any other party, and without the consent of the Trust.

3.1.1 Manner of Annexation. Declarant may annex the Additional Property by recording an amendment or supplement to this Declaration signed by Declarant and the then existing Owner of the Additional Property in the office of the County Recorder of Davis County, State of Utah. Such amendment or supplement to this Declaration shall contain the legal description of the Additional Property, shall submit the Additional Property to the terms and conditions hereof and declare that the described real property and any and all Improvements that shall at anytime be located upon any portion of such property shall be held,

sold, conveyed, transferred, designed, constructed, operated, maintained, leased, subleased and occupied subject to the easements, covenants, conditions and restrictions set forth in this Declaration.

3.1.2 Effect of Recording. Upon the recording of the amendment or supplement to this Declaration in the office of the County Recorder of Davis County, State of Utah, the real property described therein shall be subject to this Declaration.

3.2 Site Plan. The Site Plan is intended to be a general depiction of the Project and may be modified from time to time upon the written agreement of Owners and/or Subtenants, as applicable; provided, however, that no such modification shall materially modify the rights of a Owner, Subtenant, Occupant or Mortgagee without the written consent of such party. Such modification(s) may occur without the requirement that an amendment to this Declaration be recorded. The Owners shall undertake to cause an amendment to this Declaration to be recorded in the event that there is a material modification of the Site Plan or if a series of modifications reasonably requires such an amendment so that the Site Plan which is part of the public record accurately reflects the current configuration of the Project. In any event, an amendment which shall include a revised Site Plan shall be recorded concurrently with the expansion of the Project to include the Additional Property described in Section 3.1.

3.3 Barriers Restricted. Except as shall be specifically permitted by Declarant, no Owner shall permit to be constructed or erected within such Owner's Parcel or on the perimeter of such Owner's Parcel, any fence, wall, curbing or barricade, whether of a temporary or permanent nature, which limits or impairs the free access of motor vehicles and pedestrians between Parcels. Notwithstanding the foregoing, temporary barriers may be erected during periods of repair or construction, or during periods where any Improvement may be unsafe or unusable due to damage or destruction, as such may be reasonably necessary.

3.4 Common Areas and Common Facilities. The Committee shall manage, administer and maintain the Common Areas and Common Facilities, provided, however, that nothing contained herein shall preclude the Committee from entering into contracts with other parties, including a management company, to perform tasks related to the management, administration and maintenance of the Common Areas and Common Facilities. All costs and expenses incurred in connection with such management, administration and maintenance of the Common Areas and Common Facilities, including specifically, but without limitation, any capital improvement which is made upon or within the Common Areas (except the initial capital cost) and the cost of the acquisition of any Common Facilities, shall constitute a Common Expense. Declarant shall be responsible for the payment of costs and expenses incurred in the initial construction of Improvements upon the Common Areas; provided, however, that Declarant shall have the right to determine what Improvements, if any, shall be constructed upon the Common Areas. Notwithstanding the foregoing, Declarant, at its cost and expense, shall cause landscaping to be completed upon Common Areas where shown on the Site Plan for the Project. By agreement Declarant may delegate its responsibility to construct common area improvements to an Owner of a Parcel.

3.5 Use of Common Areas. The Common Areas shall be used for (i) ingress and egress of customers, visitors, invitees, licensees, and patrons (and their vehicles) of mercantile, business, or professional establishments located in the Buildings and to and from any public streets adjacent thereto, and the ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and to and from any public streets adjacent thereto, for the delivery of goods, wares, merchandise, and the rendition of services to Owners and their respective heirs, successors, grantees, assigns, and lessees (ii) ingress and egress of any of the persons designated in the preceding clause and their vehicles, to and from any portion of any Building and to and from the public streets adjacent thereto, (iii) the parking

of passenger vehicles and pedestrian and vehicular traffic, (iv) the installation, maintenance, and operation of underground common and/or public utilities services serving any Building, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, and related facilities on site, storm drainage piping, and retention and detention ponds, and related facilities, and sewage facilities, all of which (except hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground, (v) the construction, maintenance, repair, replacement, rearrangement, and reconstruction of parking sites or stalls, sidewalks, ramps, streets, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, and traffic and parking lighting facilities, (vi) the construction, maintenance, repair, replacement, and reconstruction of pylon signs (with appropriate underground electrical connections), if otherwise permitted, (vii) the construction, maintenance, repair, replacement, and reconstruction of any landscaped areas including planters, planting boxes, edges, decorative walls, and sprinklers and valves, and (viii) during the course of construction of any Buildings, those portions of the Common Areas immediately adjacent thereto may be used by the Owner of the Building, or, with such Owner's written consent, by the Subtenant thereof for the temporary storage of construction materials and equipment used and to be used in connection with the construction of the Building, provided that such use thereof does not unreasonably interfere with the normal use of such Common Areas.

3.6 Parking and Associated Areas. All driving aisles, parking aisles, driveways and parking areas contained within the Common Areas shall be properly graded, leveled, and paved with concrete or asphalt and shall also be properly marked with painted lines for the orderly flow of traffic and the parking of motor vehicles. All parking areas within the Common Areas shall be provided with appropriate access to driving aisles and driveways of adequate width.

3.7 Lighting. All parking areas within the Common Areas shall be illuminated during business hours occurring during darkness and for a reasonable period prior and subsequent thereto pursuant to a consistent lighting scheme.

3.8 No Changes in Traffic Patterns. Following the completion of the construction of the Buildings, the sizes and arrangements of those portions of the Common Areas then used for parking areas and the traffic circulation and flow patterns on the Common Areas shall not be changed or altered without the prior written consent of the Owner or Subtenant, if applicable, which consent shall not be unreasonably withheld if such changes or alterations do not materially and adversely impact upon or affect traffic flow, visibility, parking upon or access with respect to the Project and the respective Parcels.

3.9 Right to Close Common Areas. Declarant or an Owner of a Parcel reserves the right to close temporarily all or any portion of the Common Areas within a Parcel held by said Owner to such extent as in the opinion of either Declarant or the Owner is legally necessary to prevent the dedication thereof or any accrual of any rights therein in any person other than as created hereby or in the public generally.

3.10 Common Area Liability Insurance. The Committee shall, at all times, maintain, or cause to be maintained, general public liability insurance against claims for personal injury or death and property damage occasioned by accident occurring upon, in or on the Common Areas with such insurance in each case to afford protection to the limits as determined adequate by the Committee, but not less than \$3,000,000 single limit. The Committee, with the consent of the Owners, which consent shall not be unreasonably withheld, may from time to time increase or decrease the amounts of insurance maintained hereunder to reflect any actual and substantial decrease in the value of the dollar or increase in risk occurring after the date of this Agreement. The cost of such insurance shall be a Common Expense.

3.11 Taxes. Each Owner shall pay, or cause to be paid, unless otherwise required by the terms of any lease, directly to the tax assessor, prior to delinquency, all real property taxes and other special taxes and assessments which may be levied or assessed against the Parcel owned by said Owner, including the portion of the Common Area within such Owner's Parcel, and including any assessment attributable to appurtenant interests created by this Agreement, subject to the right of any party to contest such taxes and assessments in the manner provided by law. Unless such taxes are assessed in a lump sum for the entire Project, real property taxes shall not be a Common Expense to be apportioned among all Owners.

3.12 Rules and Regulations. The Manager may make reasonable rules and regulations governing the use of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Committee may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Committee shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

3.13 Maintenance of Other Improvements. Each Owner, at such Owner's expense, shall maintain, or cause to be maintained, the Improvements on its Parcel (other than the Common Areas and Common Facilities which will be maintained by the Committee) in good order and repair.

3.14 Compliance with Law. No portion of the Project may be occupied for any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any portion of the Project.

3.15 Nuisances. No Owner or Occupant shall create a nuisance in the Project. No rubbish or debris of any kind shall be placed or permitted to accumulate outside a Building upon any Parcel, and no odor shall be permitted to arise therefrom including open burning, so as to render any Parcel or any portion thereof unsanitary, unsightly, offensive or detrimental to any Property in the vicinity thereof or to the Occupants thereof. No use or operation shall be conducted in the Project that is noxious, objectionable, unsightly or detrimental to others in any manner and due to any cause such as, but not limited to, vibration, sound, radiation, air, water, drainage or sewer pollution, dust or emission of odorous toxic or nontoxic substances.

3.16 Utilities. All utility lines, connections and installations must be underground and rise within the Building to be serviced by such lines. Any external transformers, motors, heating and/or air conditioning equipment or other similar apparatus must be screened as to eliminate visibility from ground level at any location in the Project.

3.17 No Subdivision of Parcel. No Parcel shall be further subdivided without the prior written consent of Declarant or its successors or assigns to whom said power to approve has been specifically delegated. Declarant shall, in the exercise of its sole discretion, be permitted to grant or withhold such approval.

3.18 Condemnation. If at any time or times all or any part of the Property shall be taken or condemned by any public authority under power of eminent domain, the provisions of this section shall apply. A voluntary sale or conveyance of all or any part of the Property in lieu of condemnation but under threat of condemnation, shall be deemed to be a taking by eminent domain.

3.18.1 Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "Condemnation Award") attributable to the value of any land within the Common Areas shall be payable only to the Owner thereof and no claim thereon shall be made by the other Owners or Occupants; provided, however, that all other Owners or Occupants may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Areas so taken to the extent of any damage suffered by their leasehold or other estate resulting from severance of the appurtenant portions of the Common Areas so taken. The Owner of the portions of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Areas so condemned less said Owner's costs, including, but not limited to, attorneys' fees and court costs arising out of the condemnation proceedings.

3.19 Damage or Destruction of Improvements. In the event of destruction or damage from fire or any other casualty to any Buildings or Improvements erected on the Property, the Owner having its Building or Improvements destroyed or damaged, at its sole cost and expense, shall within six (6) months of the date of such casualty have: (i) started to rebuild or repair the same; or (ii) removed debris and leveled the same. If any Owner elects to rebuild or repair such Building or Improvement, the same shall be repaired and rebuilt to at least substantially the same size and as good as condition as such was in immediately preceding such casualty within one (1) year of the date of such casualty. If the Owner elects to remove the debris and level the Building or Improvements destroyed or damaged, the same shall be leveled so that the affected area conforms substantially to the Common Areas surrounding it. The Owner shall retain the right to rebuild such Building or Improvement at a later date subject to the terms of this Declaration. Anything in this subparagraph notwithstanding, if such event shall destroy 5% or less of the ground floor area of such Building, then the Owner of such Building shall have no option to remove debris and level the Building and shall rebuild or repair the same in accordance with this subparagraph.

ARTICLE IV

Management Committee

4.1 The Committee. The administration of the Project shall be by the Committee which shall consist of either (i) three (3) persons appointed by the Owners of the Project, or, (ii) in the event the Owners shall fail to appoint such members, the Owners of the Project. Members of the Committee shall serve at the will of a majority of the Owners. The Committee shall be a management committee which shall exist for the sole purpose of performing the functions and providing the services contemplated in this Declaration. Upon appointment, the members shall continue to serve until removed by a majority vote of the Owners or resignation. A member of the Committee need not be an Owner.

4.2 Voting. Each Owner shall be entitled to vote to elect the members of the Committee. Each Owner shall have one vote for each Parcel owned or leased by such Owner. An Owner may be denied the right to exercise its right to vote or participate in any meeting of the Owners for failure of said Owner to pay Assessments levied against such Owner's Parcel. Unless otherwise specifically provided, the affirmative vote of a majority of the Owners or members of the Committee, as applicable, shall be required to approve matters that are brought for approval.

4.3 Organization. The Committee shall be entitled to establish such organization and elect such officer(s) as it shall deem necessary to properly perform the functions of the Committee; provided, however, that if no other officer or organization shall be established, the Committee shall, at a minimum, upon a majority vote appoint at least a President who shall be authorized to act for and on behalf of the Committee and shall be authorized to enter into contracts and other agreements and to execute such other documents as may be required to permit the Committee to perform the duties and obligations and exercise the rights and privileges of the Committee as contained in this Declaration.

4.4 No Personal Liability; Indemnification. No member of the Committee shall be personally liable to the Owners or to any other party for civil claims arising from acts or omissions made in the performance of duties as a member of the Committee, unless the acts or omissions are the result of the intentional misconduct of such person. To the full extent allowed under Utah law and in accordance with the provision contained herein, the Owners shall indemnify an individual made a party to a proceeding because such person is or was a member of the Committee against any and all reasonable expenses, including attorneys' fees and costs, in connection with such proceeding if (i) such person's conduct was in good faith, and (ii) such person reasonably believed that said person's conduct was in, or not opposed to, the Committee's best interest, and (iii) in the case of any criminal proceeding, said person had no reasonable cause to believe such person's conduct was unlawful. The Owners shall not indemnify a member of the Committee under this provision in connection with (i) a proceeding by or in the right of the Committee in which the member was adjudged liable to the Committee, or (ii) any other proceeding charging that the member derived an improper personal benefit, whether or not involving action in such person's official capacity, in which proceeding said person was adjudged liable on the basis that said person derived an improper personal benefit. Any amounts paid pursuant to this section shall be collected as Supplemental Assessments pursuant to Section 6.5.

ARTICLE V

Rights, Duties and Obligations

5.1 Management of Common Areas. The Committee shall be responsible for the exclusive management, control, operation and maintenance of the Common Areas in a first class manner, and shall keep the same in good, clean, attractive, safe and sanitary condition, order and repair. Where it reasonably deems necessary or desirable, the Committee may construct, reconstruct, repair or replace any capital improvement related to or located upon the Common Areas. The Committee shall not be responsible for the maintenance of any part of any Parcel, except Common Areas located thereon. The Committee may, by written contract, delegate in whole or in part, to such person or persons as it shall deem advisable, such of the Committee's duties, responsibilities and functions as are properly delegable. A party to whom the Committee has delegated the responsibility for the day to day operation and management of the Project, whether such party be an individual or a management company shall be referred to as the "Manager." The Committee, or the Manager, as applicable shall have the right to exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege or duty given to it herein or reasonably necessary to effectuate any such right, privilege or duty. Any right, privilege or authority hereby granted to the Manager is granted as a representative of the Committee and each and every such right, authority and/or privilege may also be exercised by the Committee in its own name and on its own behalf. All goods and services reasonably procured by the Committee in performing its responsibilities shall constitute a Common Expense. Nothing contained in this Declaration shall be construed to obligate the

Committee to incur any expenses which cannot be reimbursed to the Committee from the Owners by virtue of an Assessment.

5.2 Allocation of Taxes. Each Owner shall be responsible to pay, prior to delinquency, any and all Taxes which shall be levied against an Owner's Parcel and any Improvements located upon such Owner's Parcel. In the event that any Owner shall fail to pay Taxes levied against such Owner's Parcel prior to the due date for payment thereof, at any time after such due date the Committee shall have the right, but not the obligation, to advance funds, whether from Committee funds, borrowed funds or otherwise, and without prior notice to such Owner, to pay such Taxes. The Owner of the subject Parcel shall reimburse the Committee for any such funds so advanced within ten (10) days of the date of such Owner's receipt of notice that the Taxes have been paid. Any funds so advanced shall be deemed to be a Reimbursement Assessment against such Owner's Parcel and any and all provisions of this Declaration related to the enforcement and collection of a Reimbursement Assessment, including, without limitation, the notice, existence and foreclosure of a lien for same and the collection of interest, costs and fees, but excluding the requirement of a thirty (30) day notice, shall be applicable.

5.3 Project Signs. The initial design of the Project Signs shall be determined in the sole discretion of Declarant. The users of the Project Signs shall be responsible for payment of costs and expenses incurred in the construction and installation of any Project Signs which Declarant elects to install. The Committee shall be responsible to maintain any Project Signs installed and Improvements related to such Project Signs and any and all costs and expenses which shall be incurred in the operation, servicing, replacement and maintenance of the Project Signs (and any related Improvement) shall be borne equally by the Parcels using the particular sign. Such expenses ("Sign Expenses") shall be deemed a "Reimbursement Assessment" as described in Section 6.6. Notwithstanding anything in this Section 5.3 to the contrary, each panel on a Project Sign which advertises the business of an Occupant shall be maintained by such Occupant.

5.4 Enforcement of Rights. The Committee shall be responsible to reasonably pursue performance of duties and obligations to be performed and/or collection of payments required to be made to or for the benefit of the Project generally, including, by way of illustration and not by way of limitation, payment of unpaid Assessments from Owners, enforcement of warranty obligations of parties responsible for the construction and/or maintenance of Improvements constructed for the benefit of the Project generally and insurance claims resulting from damage to the Common Areas or Common Facilities. Declarant shall cooperate in the assignment to the Committee of any warranties associated with the construction of Improvements constructed by Declarant.

5.5 Implied Rights. The Committee, or the Manager, as applicable, may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right, privilege, or duty given to it herein or reasonably necessary to effectuate any such right, privilege, or duty.

ARTICLE VI

Assessments

6.1 Payment of Assessment. Each Owner by acceptance of a deed to any Parcel, whether or not it shall be so expressed in such deed or other conveyance shall be deemed to and does hereby covenant and agree to pay any and all Assessments levied against its Parcel in accordance of the provisions of this

Declaration. Each Owner shall have the duty to pay any and all Assessments which shall be levied against any Parcel owned by such Owner. The Assessments, together with interest thereon which shall accrue at the Interest Rate or Default Rate, as set forth herein, late charges and costs of collection thereof, including court costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Parcel against which such Assessments are made from the date on which such Assessments are due. Unless otherwise previously agreed by a Subtenant, assessments shall commence upon the date of the recording of this Declaration. An Owner who has leased his Parcel may pass Assessments on to his tenant subject to the lease terms; provided, however, the Owner shall be and remain liable to pay such Assessments as herein provided.

6.2 Apportionment. The amount of each Assessment, whether a General Assessment or Supplemental Assessment, to be paid by an Owner shall be computed by apportioning the total of such Assessment among and to all Owners in accordance with the provisions of this Section 6.2.

6.2.1 Other Owners. Each Owner shall be responsible to pay a percentage of any General Assessment or Supplemental Assessment, which percentage shall be in proportion to their respective percentage ownership (the "Owner's Percentage") of the Total Building Footage which shall exist in the Project. An Owner's Percentage may vary during a calendar year if the Total Building Footage shall change during such year and any computations related to determination of the amount of an Assessment required to be paid by an Owner shall recognize any change in the Total Building Footage during the applicable time period. Each Owner's Percentage shall be obtained by dividing the Building Footage which shall exist on said Owner's Parcel, by the Total Building Footage (including the Building on said Owner's Parcel) which shall exist within the Project on the same date. The amount obtained by multiplying the total amount of the applicable Assessment by the Owner's Percentage shall be the amount of the applicable Assessment which such Owner shall be required to pay.

6.3 Annual Budget. General Assessments shall be determined on the basis of a calendar year beginning January 1 and ending December 31 next following; provided, however, that the first such year shall begin on the date that this Declaration is recorded and shall end December 31, 2002. Each year, the Manager shall prepare and furnish to each Owner or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year the "Annual Budget." The Annual Budget shall itemize for the applicable year, the estimated Common Expenses, as defined in Section 1.7, anticipated receipts, if any, and any estimated deficits or surpluses from the prior operating period. The Annual Budget shall serve notice of and as the supporting document for the General Assessment for the upcoming fiscal year and as a guideline under which the Project shall be operated during such annual period.

6.4 General Assessment. All Common Expenses shall be paid through an annual assessment to all Owners. Each Owner's share of the total Common Expenses, as estimated by the Annual Budget, shall be a "General Assessment." Each respective share of a General Assessment shall be based upon the Annual Budget determined in accordance with Section 6.3. At the end of each calendar year, the Manager shall determine the exact amount of the Common Expenses which has been incurred, and shall charge or credit each Owner in the next assessment period for the difference between the actual Common Expenses incurred for the prior assessment period and the estimated Common Expenses upon which said General Assessment was based. Within one hundred twenty (120) days of the close of each calendar year, each Owner or Occupant shall be provided a copy of the operating statement for the preceding year. Said operating statement shall provide reasonable detail of the actual income and expenses for the applicable year, as well as supporting invoices or documentation as are reasonably requested by an Owner or Occupant.

6.4.1 Notice. The General Assessment for each calendar year shall be due and payable thirty (30) days after delivery of the written notice of the amount thereof. Failure of the Manager to give timely notice of any General Assessment by delivery of the Annual Budget, as provided herein, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay such General Assessment or any other Assessment.

6.4.2 Payment. Any Owner which shall not have paid its annual General Assessment in full on or before the date upon which same shall be due in accordance with Section 6.4.1, shall be deemed to have elected to pay such General Assessment in equal monthly installments. Any General Assessment which shall not be paid on or before January 1 of the applicable year shall accrue interest at the Interest Rate on the unpaid balance thereof from the original date due until paid. The Manager may, but shall not be required to send out monthly statements to an Owner and each such installment shall be due and payable on the first day of each month without notice or demand. Any monthly installment of any General Assessments which shall not have been received by the Manager on or before the tenth (10th) day of any month in which it is due shall be assessed a late charge in an amount to be determined from time to time by the Manager, but which shall not be in an amount in excess of five percent (5.0%) or the maximum rate permitted by applicable law, whichever is lower, the amount of the unpaid installment. In the event that a monthly installment of a General Assessment which is being paid monthly as permitted in accordance with the provisions of this section is not paid when due, then so long as the monthly payment or payments shall remain delinquent, the unpaid balance of such General Assessment shall accrue interest at the Default Rate. Late charges and interest on any unpaid monthly installments of any General Assessments may be charged according to procedures established by the Manager, whether or not monthly statements shall have been sent. The Manager shall have the right to establish a fee for costs and expenses incurred in maintaining records of the installment payments of General Assessments, which fee shall be charged only to Owners who pay such General Assessments on an installment basis.

6.5 Supplemental Assessments. In addition to the General Assessment, the Committee may levy, in any year, one or more Supplemental Assessments applicable to that year only for the purpose of paying, in whole or in part, (i) the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Areas and/or which are Common Facilities, (ii) deficits created by non-payment of any Assessments by any Owner, and (iii) other costs and expenses required to be paid by the Owners in accordance with the provisions of this Declaration. At the time of the adoption of such Supplemental Assessment, the Committee shall designate the time and the manner in which such Supplemental Assessment is to be paid by each Owner; provided, however, that the due date for payment of a Supplemental Assessment shall be at least thirty (30) days from the date that notice of the Committee's approval of the Supplemental Assessment shall be given by the Committee. Such Supplemental Assessment shall be apportioned to each Owner in the manner set forth in Section 6.2. Any Supplemental Assessment which shall not be paid on or before the applicable due date shall accrue interest at the Default Rate on the unpaid balance thereof from the original date due until paid.

6.6 Reimbursement Assessment. The Committee may, subject to the provisions hereof, levy an Assessment for Sign Expenses pursuant to Section 5.3 and also an Assessment against any Owner if the willful or negligent failure of an Owner to comply with this Declaration or the Rules and Regulations have resulted in the expenditure of funds by the Committee to cause such compliance. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after notice provided in Section 6.8. The amount of the Reimbursement Assessment shall be due and payable thirty (30) days after notice to the Owner of the decision that the Reimbursement Assessment is owing. Interest shall accrue on any Reimbursement

Assessment at the Default Rate from the date of expenditure of funds by the Committee until such amounts shall be repaid.

6.7 Collection of Assessments. The Committee or the Manager shall in its sole discretion, be entitled to establish such procedures for the collection of Assessments, including provisions for late charges, interest on unpaid Assessments, and such other matters as the Manager shall determine, and shall have any and all rights and remedies provided at law or in equity for the collection of debts, subject only to the requirement of notice provided in Section 6.8.

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

6.9 Remedies to Enforce Assessments. Each Assessment, together with accrued interest, late charges or other similar charges, levied shall be a separate, distinct and personal debt and obligation of the Owner against whom such Assessment is assessed. Suit to recover a money judgment for such personal obligation shall be maintainable by the Committee against such Owner without foreclosing or waiving the lien securing the same. Any and all rights and remedies shall be exercised in such manner, on one or more occasions and in such order as the Committee shall elect, without waiver of any other right or remedy or lien provided in this Declaration or by law. Any failure of the Committee to exercise any such right on one or more occasions shall not constitute a waiver of the right to so exercise such right in the future. In addition to the amount of the unpaid Assessment, an Owner shall be required to pay any and all costs and expenses which may be incurred in collection of such Assessment, including reasonable attorneys' fees and costs, whether or not litigation is commenced.

6.10 Lien for Assessments. All sums assessed to an Owner of any Parcel in the Project pursuant to the provisions of this Declaration, together with interest thereon at the Interest Rate or Default Rate, as applicable, late charges and costs of collection, shall be secured by a continuing lien on such Parcel in favor of the Committee. The Committee may record a notice of lien amount for sums assessed pursuant to this Declaration. If it elects to do so, the Committee shall cause to be prepared a written notice of lien setting forth (i) the name of the Owner of the applicable Parcel, (ii) the legal description of the Parcel, (iii) the amount of the Assessment, (iv) the date such Assessment was due and (v) the amount remaining unpaid. Such notice of lien shall be signed and acknowledged by a member of the Committee or the Manager, and shall be recorded in the office of the County Recorder of Davis County, State of Utah. No notice of lien shall be recorded until there is a delinquency in the payment of the Assessment and after the notice required to be given pursuant to Section 6.8. Such lien may be enforced by the sale or foreclosure of the Parcel encumbered by the lien at a foreclosure sale conducted by the Committee or its attorney in accordance with the provisions of Utah law applicable to the foreclosure of a mortgage or trust deed or in any manner permitted by Utah law, including specifically, but without limitation, the method recognized under the laws

of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Annotated, as amended from time to time. In a foreclosure conducted under the trust deed statute, the Committee may appoint any licensed attorney or title company as trustee. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien herein provided whether or not the same shall be specifically set forth therein. The Owner shall also be required to pay any Assessments against the Parcel which shall become due during the period of foreclosure or sale, and all such Assessments shall be secured by the lien herein provided. The Committee shall have the right and power to bid in any foreclosure or sale and, upon purchase thereof, to hold, lease, mortgage or convey the subject Parcel. In the event a proceeding for the foreclosure of the lien granted hereby shall be commenced, while such proceeding shall be in process, the Committee shall be entitled to the appointment of a receiver to collect the rentals being derived from said Parcel.

6.11 Priority of Lien; Liability of Owner. This lien shall have priority over all other interests in the Parcel except liens for real property taxes and Mortgages in certain circumstances set out in Section 8.3 herein. The priority of lien for Assessments provided for herein over a Mortgage shall be governed by the provisions of Section 8.3. No foreclosure of a lien shall extinguish the personal liability of the Owner therefor unless the Committee shall either (i) actually purchase the Parcel at the foreclosure sale conducted to foreclose such lien, or (ii) actually receive payment in full of amounts due. An Owner's personal liability for payment of Assessments shall be reduced by the amount actually paid at the foreclosure by the successful bidder which shall remain after allocation for payment of costs and expenses incurred by reason of such sale. No other sale or transfer shall relieve such Owner from liability for any Assessments which shall be due as of the date of foreclosure.

6.12 Certificate of Assessment. The Committee or the Manager shall, upon written request, and for a reasonable charge, furnish a certificate signed by a member of the Committee or the Manager, setting forth whether the Assessments on a specific Parcel have been paid and said certificate may be conclusively relied upon by the party requesting same.

6.13 Notice and Opportunity to Cure. Prior to commencement of any action to foreclose a lien provided for in this Article VI, notice shall be given to any Subtenant or Occupant of a Parcel that has a single Subtenant or Occupant and which Subtenant has recorded a memorandum of its lease in the records of the Davis County Recorder. Said notice shall be a copy of the same notice given to the Owner under Section 6.8 above, shall be sent concurrently with that notice, and the tenant shall have fifteen (15) days beyond the time given Owner in Section 6.8 in which to cure the default and avoid the commencement of foreclosure proceedings.

6.14 No Avoidance. No Owner may avoid or diminish such Owner's obligation to pay Assessments, the right of the Committee to assert a lien against said Owner's Parcel to enforce payment of same or be relieved of such Owner's personal obligation for the payment of Assessments by reason of (i) a waiver of the use or enjoyment or the actual non-use of any of the Common Areas or Common Facilities, (ii) a waiver of any services provided for in this Declaration, or (iii) all or any part of said Owner's Parcel being unoccupied for all or any portion of the period for which such Assessments shall have been made.

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

"Default Rate" when used in this Declaration shall refer to a per annum rate of interest which shall be six percent (6.0%) per annum above the Reference Rate. The Interest Rate and the Default Rate shall be adjusted at the same time and in the same manner as there shall occur any change in the Reference Rate. The Reference Rate is the rate of interest established and made public from time to time by Zions First National Bank at its Salt Lake City office, (the "Bank") and its successors and assigns, and used by the Bank as its reference point for pricing loans to substantial commercial borrowers, whether such rate shall be denominated as its reference rate, prime rate or other similar or dissimilar term. The Reference Rate shall be deemed also to refer to any subsequent reference point, however denominated, that may in the future be adopted by the Bank as the replacement for the Reference Rate which is currently being used by the Bank as its reference point. All calculations of interest hereunder shall be made as follows: (i) the Interest Rate or the Default Rate, as applicable, shall be multiplied by the amount due, (ii) the product determined in clause (i) above shall be divided by three hundred sixty-five (365); and (iii) the quotient obtained in clause (ii) above shall be multiplied by the actual number of days in the period for which the calculation is being made. Notwithstanding anything in this Declaration to the contrary, in no event shall the Interest Rate or the Default Rate at any time exceed the maximum rate permitted by applicable law.

6.16 No Offset. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Committee, Manager or any officer, employee, agent or representative thereof is not properly exercising its duties and powers under this Declaration.

ARTICLE VII

Easements

7.1 In General. The Property shall be conveyed and owned subject to and together with the Easements herein recited or as set forth on the Plat and/or Site Plan, whether or not such Easements are specifically set forth in a document of conveyance. In each instance the physical location of an Easement may, in some circumstances, be located in the same place and the use thereof may be shared with other Easements similarly located and in each such instance the rights and privileges associated with each such Easement shall be interpreted separately, but the use shall be deemed to be non-exclusive with any other Easement similarly located. Easements granted pursuant to this Declaration shall be utilized in the manner that shall not unduly interfere with the use of the Parcel upon which such Easement is situated. No Easement may be amended, extinguished or otherwise modified in any manner by an amendment to this Declaration or the Site Plan without the express written approval of the Owner of the real property which shall be benefitted or intended to be benefitted by the existence of such Easement. It is expressly agreed that any and all Easements granted pursuant to this Declaration shall survive any termination, expiration or other cessation of this Declaration and shall be extinguished only upon the execution and delivery of a termination executed by the party legally entitled to terminate the Easement intended to be terminated.

7.2 Easement for Use of the Common Areas. There is hereby granted to each Owner of a Parcel, for the benefit of that Parcel and the Occupants thereof, and each Parcel is hereby subjected to, an easement for use of the Common Areas located on that Parcel for the purposes set forth in this Declaration and/or specifically designated on the Site Plan. No parcel Owner or Occupant shall restrict or in any way impede the free flow of pedestrian or vehicular traffic between the Parcels or to or from the adjoining roadways as intended by the Site Plan. Notwithstanding the foregoing, the Manager may, from time to time, by reasonable rules generally applied, designate areas for employee parking which are less desirable for

customer parking. No part of the Common Areas shall be used for the sale of merchandise or any other commercial purposes without the written consent of Declarant or any successor to its ground lease interest in the Property, except as may be specifically permitted by the terms of this Declaration or the exhibits hereto. Declarant or any successor to its interest as Tenant under the primary Ground Lease in the Property may, from time to time, grant to Occupants under subleases rights to use the Common Areas not inconsistent with this Declaration provided that such use shall not impair the rights of other Owners herein granted and may restrict such uses under the subleases in any manner it so desires. This Declaration shall not be deemed to grant to any such Subtenant any rights greater than those contained in its sublease and no rights contained in any sublease shall be deemed to bind the Project or any other Owner or Occupant unless specifically set forth in Exhibit "D" or Exhibit "E" to this Declaration and then only for so long as that sublease is in effect.

7.3 Public Utilities Easement. There is hereby granted to Declarant, each Owner and to the provider of any utility service, a non-exclusive underground Easement (the "Utilities Easement") to construct, install, operate, service, repair, replace and maintain any and all underground public and private utility lines of any nature, including, without limitation, culinary water, irrigation water, sanitary sewer, storm water drainage, natural gas, electricity, cable television, telephone and other forms of communication, which may now exist or which may in the future exist which may be required or desirable to service any Improvements, including specifically, but without limitation, all wiring, lines, conduits, pipes, sewers, valves, junction boxes, control boxes and drainage lines and related facilities (the "Utility Lines"). The Utilities Easement shall be located upon those areas of the Project not occupied by Buildings and as approved by Declarant; provided that no Utilities Easement shall violate any of the restrictions set forth on Exhibit "D" to this Declaration. The Utilities Easement herein granted shall include an easement over and across the surface of the Property as may be necessary to construct, service and maintain such Utility Lines. In the event any utility company, quasi-utility company, public entity, agency or district, cable company or similar entity furnishing a service covered by this Utility Easement requests a specific easement to be located within the Utilities Easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such Easement, provided that such easement shall be in compliance with the provisions of this Section 7.3. Any grantee using the Easements granted herein or by separate document shall be obligated to repair and return the surface area of the Easement to the condition in which it was found, including the replacement of any asphalt, landscaping or other Improvements that were located thereon. At such time as Declarant shall cease to be the Owner of a real property over which the Easement is required, the Committee shall be deemed to have reserved the right and authority to grant such Easement, provided that such Easement shall conform with the provisions of this Section 7.3.

7.4 Sign Easements. There is hereby granted to Declarant one or two easements (the "Sign Easements") to construct, install, service, replace and maintain Project Signs. The Sign Easement shall be located upon the Common Areas specifically designated on the Site Plan. The Sign Easement herein granted shall include an easement over and across the surface of the Property from the public right of way or Project driveway to the location of the Project Sign as shall be reasonably necessary for the construction, installation, servicing, replacement and maintenance of the Project Sign. The Sign Easement shall be utilized in the manner that shall be reasonably determined to not unduly interfere with the use of those portions of the Property upon which such Easement is situated. Responsibility for the maintenance of the Project Signs is specifically set forth in Section 5.3.

7.5 Access to Perform Duties. There is hereby granted unto the Committee an Easement, together with the right to grant and transfer such Easement to others as is reasonably required to accomplish the intended purpose of such Easement, over and through all portions of the Project for the purpose of permitting the Committee to exercise its rights and discharge its obligations and duties under this

Declaration. Such right of access shall be specifically granted to security personnel employed by or under contract with the Committee, all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties.

7.6 Extension of Easement. Each Parcel, whether now existing or whether in the future existing, as defined in accordance with the provisions of this Declaration, shall have appurtenant thereto, and shall be benefitted and burdened by, as applicable, the Easements herein granted. Each Owner shall be entitled to the benefit of the Easements herein granted and shall be entitled to permit each Occupant, together with any agent, contractor, licensee, employee and any business customer, invitee and guest of said Owner and/or Occupant ("Other Users"), the non-exclusive right to enjoy the benefits of the Easements herein granted, but said Owner's and Other User's use and enjoyment of its Parcel shall be subject to and burdened by the Easements also herein granted.

7.7 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the Easements, each Owner may be entitled to take whatever steps it deems necessary to protect and preserve the private ownership of its Parcel and to prevent same from being dedicated to the public use as a matter of law; provided, however, that such steps shall be taken in such manner and at such time as shall cause minimal disruption of the occupancy and usage of said Owner's Parcel. Any Easement granted to the City shall be deemed granted to the City only, which may be used by its employees, agents, contractors and representatives in performance of their respective duties within the Project, and shall not be construed to be a grant to the public generally.

ARTICLE VIII

Mortgagee Protection

8.1 Mortgagee Protection. No breach of any of the covenants, conditions, restrictions, or limitations contained in this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure.

8.2 Notice of Noncompliance to Mortgagee. From and after the time a Mortgagee makes written request to the Manager therefore, the Manager shall send to the Mortgagee a copy of any notice of default under this Declaration sent to an Owner or lessee, if a leasehold mortgage.

8.3 Priority of Assessment Lien. The lien or claim against a Parcel for unpaid Assessments levied by the Manager pursuant to this Declaration shall be subordinate to a Mortgage given in good faith and for value affecting the fee simple or leasehold interest in such Parcel which has been recorded prior to the date such Assessment became due. A Mortgagee who comes into possession of the Parcel pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or delivery of a deed or assignment in lieu of foreclosure, except that such Mortgagee shall be responsible for the payment of a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Parcels

including the Parcel in which the Mortgagee is interested. No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not being a burden to a Mortgagee coming into possession pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a Mortgagee, a successor in title to a Mortgagee or the Parcel affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Parcel).

8.4 Financial Information. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Manager during reasonable business hours. From and after the time a Mortgagee makes written request to the Manager therefore, and at the expense of such Mortgagee, the Manager shall furnish to such Mortgagee copies of such financial reports or writings summarizing or reflecting the financial position or history of the Common Area maintenance for the Project as may be prepared for distribution to or use by the Owners generally.

8.5 Article Supersedes Others. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article VIII, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Manager with respect to the subject concerned.

8.6 Amendment to Article. No amendment to this Article VIII which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the first Mortgagees of the individual Parcels have given their prior written approval to such amendments. Any amendment to this Article VIII shall be accomplished by an instrument executed by the Committee and filed for record in the office of the County Recorder of Davis County, State of Utah. In any such instrument, an officer of the Committee shall certify under penalties of perjury that the prior written approval of first Mortgagees required by this Article VIII as a condition to amendment has been obtained.

8.7 Notices to Mortgagee. Any notice to a Mortgagee under this Article VIII shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class mail, postage prepaid, and addressed to the Mortgagee at the address for notices from time to time specified by the Mortgagee in writing to the Manager.

ARTICLE IX

Consent of Trust

9.1 Submission of Fee Ownership to Declaration. The Trust, as the fee simple owner of title to the Property, has executed this Declaration as evidence of its consent to the recording of this Declaration and the submission of the Trust's ownership interest in the Property to the easements, covenants, conditions and restrictions set forth in this Declaration.

9.2 Covenants to Run With Land. The Trust does hereby submit the fee ownership of the Property to all of the easements, covenants, conditions, restrictions and other provisions contained herein and consent and agree that same are intended to be, and shall constitute covenants which shall run with the land and which shall be binding upon the Trust and shall inure to the benefit of Declarant, each respective Owner, each Occupant and any other party which has or may acquire any interest in or to any portion of the

Project and each respective grantee, transferee, heir, devisees, personal representatives and successors and assigns thereof.

9.3 Limitation on Termination. The Trust does hereby agree that this Declaration shall continue to constitute covenants which shall run with the land described herein even in the event of a termination of the Primary Ground Lease. Only at such time as the Trust shall be the holder of legal and equitable title to the Property and all rights of possession to the exclusion of any other party under a lease or any other right of occupancy, can the Trust unilaterally terminate this Declaration.

ARTICLE X

Miscellaneous Provisions

10.1 Notices. Upon acquisition of title to a Parcel, the Owner of such Parcel shall provide written notice to the Manager of such Owner's address for purposes of furnishing notices in connection with this Declaration. An Owner may request that such notice be sent to its Subtenant. The Manager shall maintain a record of the notice addresses furnished by the Owners. The address provided by an Owner shall be used for any notice required to be given under this Declaration and if no such address shall have been provided, then the address used by Davis County for the mailing of real property tax statements for such Parcel shall be used for such notice. All notices to be given pursuant to this Declaration shall be sufficient if given by personal service, by guaranteed overnight delivery service or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the prescribed address. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the date after delivery to the guaranteed overnight delivery service or two (2) days after mailing certified or registered mail.

10.2 Amendment. Except where otherwise specifically provided in this Declaration, this Declaration may be amended upon the affirmative vote of a majority of the total votes of the Owners, each having one vote for each Parcel owned. Any such amendment shall recite that a vote of the those entitled to vote has been properly taken and that the amendment has been approved in accordance with the provisions hereof, shall be certified by an officer of the Manager and shall be recorded in the office of the Davis County Recorder, State of Utah. Any such amendment shall take effect upon such recording. Each Owner makes, constitutes and appoints the President of the Committee the true and lawful attorney-in-fact of said Owner to act in said Owner's name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration as may be required by law or by vote taken pursuant to the provisions of this Declaration. Any amendment to this Declaration which shall require the express consent of a specified party, shall be accomplished only by an amendment executed by both the Manager and the party from whom such consent shall be required which shall be filed for record in the office of the County Recorder of Davis County, State of Utah.

10.3 Amendment by Declarant. Declarant reserves and shall have the sole right to (i) amend this Declaration without the vote or consent of any Owner for the purpose of curing any inconsistency between the provisions contained herein, (ii) amend this Declaration without the vote or consent of any Owner in any manner which does not adversely affect the rights of existing Owners, Occupants or Mortgagees, or (iii) amend the Site Plan where such amendment does not materially alter the rights of any Owner, Subtenant or Occupant. The foregoing amendments may be made without the joinder or approval of any Owner, Mortgagee or the Manager.

10.4 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and Project for a term which shall correspond to the term of the Primary Ground Lease and any extension thereof. In the event of any termination of the Primary Ground Lease prior to its scheduled expiration, then this Declaration shall run with and bind the Property and the Project for a term of fifty (50) years from the date this Declaration is recorded, after which time, the Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by the affirmative vote of three-fourths (3/4) of the Owners, each having one vote for each Parcel owned. No such termination shall terminate any Easement granted herein and all such Easements shall survive any termination of this Declaration and may be extinguished only in the manner provided by law for the termination of an easement.

10.5 No Merger. The easements, covenants and restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any of the Parcels may be owned by the same persons from time to time. It is the express intent of the Declarant to create a common scheme for the development and operation of the Project which will not be terminated by the doctrine of merger or otherwise unless this Declaration is terminated in accordance with the provisions hereof.

10.6 Assignment of Declarant's Rights and Remedies. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation, association or other entity which assumes such assigned duties of Declarant hereunder. In the event that Declarant attempts to assign less than all of the rights, powers and reservations of Declarant set forth herein, then any such assignment must specify which rights, powers and reservations are being assigned and the only party that shall be permitted to exercise a right reserved or granted unto Declarant shall be the party to whom such right has been assigned. To be effective, such assignment must be in writing, must be recorded in the office of the Davis County Recorder, State of Utah, and must specifically refer to the rights, powers and reservations of Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity (such acceptance may be shown, among other ways, by execution of such assignment by such assignee, or by such assignee recording the assignment in the office of the Davis County Recorder, State of Utah) and recording of such assignment in the office of the Davis County Recorder, State of Utah, said assignee shall, to the extent of such assignment, assume, and be deemed to have assumed, Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and recording, and to the extent thereof, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property by Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

10.7 Not a Partnership. The parties hereto do not by this Declaration, in any way or for any purpose, become partners or joint venturers of the other parties in the conduct of their respective businesses or otherwise. The provisions of this Agreement relating to sharing of common area expenses, the common management of the properties, and the granting of reciprocal easements are included solely for the purpose of providing a reasonable method for the allocation and management of common costs of operating and

maintaining shared facilities and providing for mutual ingress and egress to contiguous parcels of real property.

10.8 Violation Creates Nuisance. Any violation of any provision, covenant, condition or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any party entitled to enforce the provisions of this Declaration.

10.9 Violation of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any Property or Improvements within the Project, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

10.10 No Third Party Beneficiary. This Declaration has been executed and recorded for the benefit of Declarant, Owners, Subtenants, Occupants and Mortgagees. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefitted by a specific provision of this Declaration, no other party shall be construed to be an intended third party beneficiary of any of the rights, duties or obligations set forth herein and no party other than Declarant, Owners, Subtenants, Occupants and Mortgagees shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

10.11 Words of Conveyance. The use of the word "grant," and any form thereof, as used in provisions of this Declaration to create or preserve easements, licenses or other rights and privileges described herein shall be deemed to be construed in such manner as shall be required to give effect to the easement, license, right or privilege intended to be created or preserved by such provisions and, to the extent necessary to effect such result, any use of the word grant, or any form thereof, shall be deemed to include such other words of conveyance (e.g., such as reserve, quitclaim, convey, transfer, etc.) as may be required to give effect to the easement, license, right or privilege intended to be created or preserved.

10.12 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

10.13 Gender and Number. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

10.14 Captions. The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

10.15 Invalidity of Provision. If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

10.16 Exhibits. All exhibits to this Declaration are incorporated herein by this reference.

10.17 Governing Law. This Declaration and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah.

EXECUTED to be effective the day that this Declaration shall be recorded in the office of the Davis County Recorder, State of Utah.

Declarant: JT LAYTON CROSSING NORTH, L.C.,
a Utah limited liability company

By: [Signature]
Name: John R. Thackeray
Its: Manager

Trust: [Signature]
Johnny E. Willis, Trustee of the Laura Allen and Parley Green Charitable Remainder Trust dated January 31, 2001

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

The foregoing instrument was acknowledged before me on the 17th day of July, 2002, by John R. Thackeray, Manager of JT LAYTON CROSSING NORTH, L.C., a Utah limited liability company.

My Commission Expires:
9-26-2005

[Signature]
Notary Public
Residing at _____

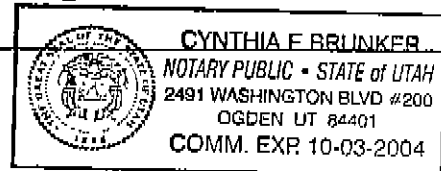


STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me on the 12 day of July, 2002, by Johnny E. Willis, Trustee of the Laura Allen and Parley Green Charitable Remainder Trust dated January 31, 2001

My Commission Expires:

[Signature]
Notary Public
Residing at _____



K&M 594675.1

**EXHIBIT A
to
DECLARATION**

Legal Description

Real property located in Davis County, State of Utah which is more particularly described as follows:

All of Lots 1, 2, 3 and 4, LAYTON CROSSING NORTH SUBDIVISION, according to the official plat thereof recorded December 7, 2001 as Entry No. 1710323 in Book 2940, Page 835 of the official records of the Davis County Recorder, State of Utah.

EXHIBIT B
to
DECLARATION

Site Plan E 1797778 B 3151 P 2401

U.S. Highway 91 (Main Street)

State Road #232

1 SITE PLAN
DATE: 11/20/99

1/2" = 10' - 0"

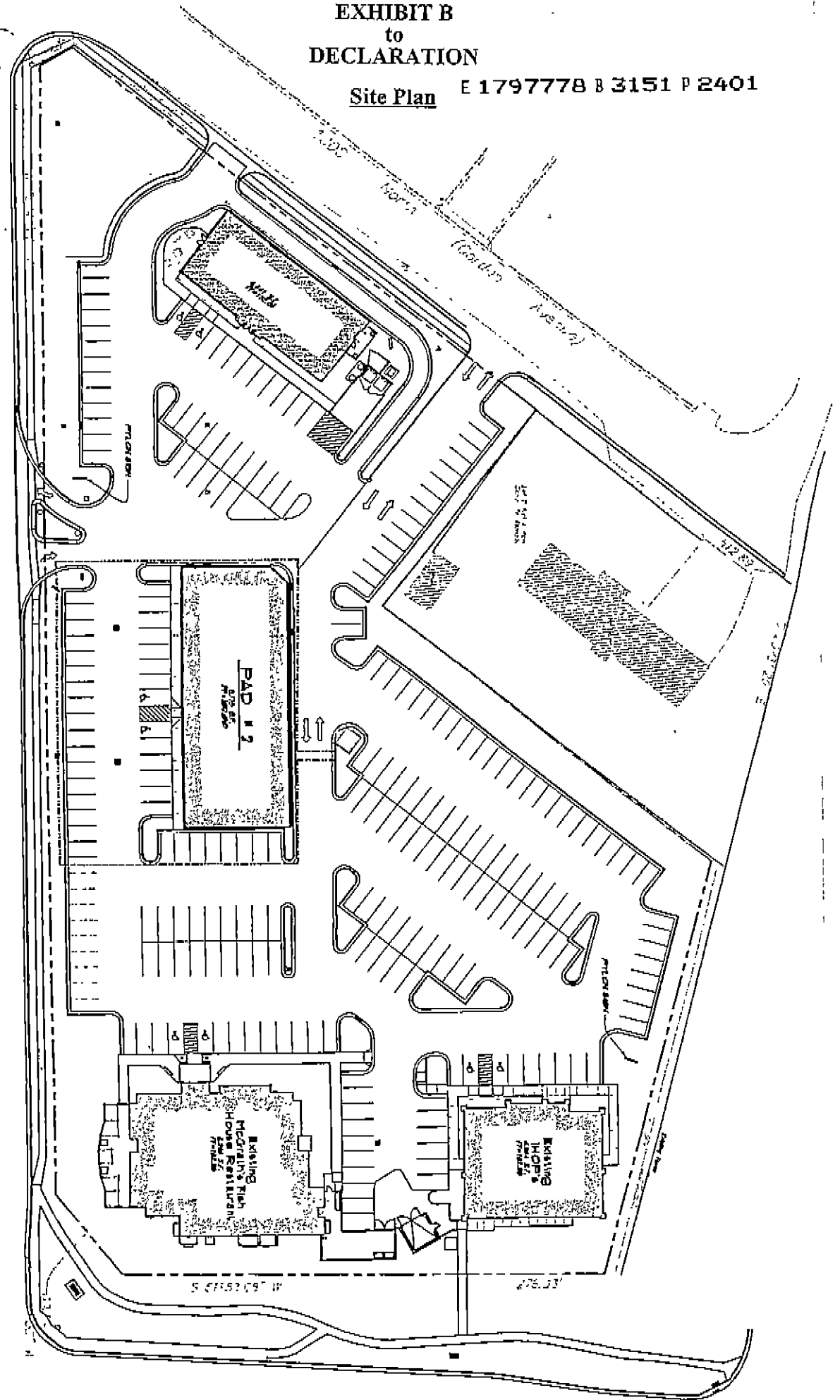


EXHIBIT C
to
DECLARATION

Legal Description - Additional Property

Real property located in Davis County, State of Utah which is more particularly described as follows:

All of Lot 5, LAYTON CROSSING NORTH SUBDIVISION, according to the official plat thereof recorded December 7, 2001 as Entry No. 1710323 in Book 2940, Page 835 of the official records of the Davis County Recorder, State of Utah.