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WHEN RECORDED, MAIL TO:  
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Salt Lake City, Utah 84111

**Protective Covenants, Easements, Restrictions, and Uniform Plan  
For  
The Pointe**

WHEREAS, SORENSON ASSOCIATES, THE POINTE, LLC hereinafter referred to as "Developer" is the owner of certain tracts and parcels of land in Salt Lake County, Utah, described as follows:

Lots 1, 2, 3, 4, 5, 6, and 7 of The Pointe, a Commercial Subdivision located in the Southwest Quarter of Section 7, Township 4 South, Range 1 East and the Southeast Quarter of Section 12, Township 4 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah;

and

WHEREAS, Developer desires to subject all of the above described property, together with all re-subdivisions and re-plats thereof to the basic covenants, conditions, charges, encumbrances and restrictions hereinafter set forth. All of the above described property and adjoining or adjacent tracts or parcels of land which Developer or its heirs, successors or assigns own or shall own and make subject to this document by amendment hereto (if any) shall be hereinafter referred to collectively as "The Pointe."

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer, in order to provide a uniform plan and a common fund for the purpose of:

- (a) ensuring the orderly development of The Pointe;
- (b) improving, maintaining, repairing, replacing and perpetually caring for certain improvements and amenities that will serve or benefit all of The Pointe;
- (c) supervising, administering and enforcing deed and other restrictions, especially the architectural standards and requirements imposed hereby; and
- (d) ensuring security in and along the thoroughfares within The Pointe;

does hereby adopt, establish and impose the following covenants, conditions, charges and restrictions upon The Pointe, which covenants, conditions, charges and restrictions shall be deemed to be included in all future contracts for deed, deeds and leases affecting any parcel included within The Pointe, the same as if such provisions were set forth verbatim therein, as covenants running with the title to The Pointe.

## **PART 1 - DEFINITIONS**

As used in all Parts of this instrument:

- 1.1 "Access Easement" shall mean the easement(s) described in section 6.2 hereof.
- 1.2 "Architectural Control Committee" shall initially mean the Developer, but at such time as a separate committee is appointed as provided herein, it shall mean and refer to those individuals who are appointed to serve as committee members to carry out the provisions of the Uniform Plan and more specifically including those provisions contained in section 5.7 hereof.
- 1.3 "Basic Landscape Plan" shall mean and refer to the specifications for the landscaping of Landscape Areas, including signs and markers, published by the Developer and available without charge at the office of the Developer, and also available at the office of the Architectural Control Committee.
- 1.4 "Basic Restrictions" shall mean and refer to the covenants, conditions, charges, encumbrances and restrictions set forth within.
- 1.5 "Building Envelope" shall mean and refer to the specific portion of a Lot on which a building has been constructed or which is reserved for the construction of a Building. The Building Envelopes are shown on Exhibit "A" attached hereto and incorporated by reference herein.
- 1.6 "Common or Community Improvements" shall have the meaning given in section 3.2 hereinbelow.
- 1.7 "Corporate Way" and "Scenic Pointe Drive" shall mean and refer to the thoroughfares bearing those names, as shown on the Plat.
- 1.8 "Developer" shall mean and refer to Sorenson Associates, The Pointe, LLC, a Utah limited liability company, and its successors and assigns.
- 1.9 "Entrances to The Pointe" shall mean and refer to the areas within the respective rights-of-way of the various public Streets adjacent to The Pointe which areas are reserved for entrance markers and landscape objects and materials as more particularly described in the Basic Landscape Plan.
- 1.10 "Front Setback Area" shall mean and refer to the area between the Parkway Strip (as that term is defined herein) and the front setback line of a Lot as required by Draper City or other applicable governmental authority.

1.11 "Green Area" shall mean and refer to an area reserved (on a nonexclusive basis) for pedestrian use, landscaping, or both, and shall contain trees and grass or other landscape materials as more particularly stipulated in the Basic Landscape Plan. Green Areas may be located entirely or partially (a) within one (1) or more setback areas established herein, including, without limitation, a Parkway Strip, or (b) elsewhere within a Lot as required by these Basic Restrictions and the Basic Landscape Plan.

1.12 "Hazardous Substance" shall mean and refer to any substance the release of or the exposure to which is prohibited, limited or regulated by any environmental law, or which poses a hazard to human health, including: (A) any "oil," as defined by the Federal Water Pollution Control Act and regulations promulgated thereunder (including crude oil or any fraction of crude oil), (B) any radioactive substance and (C) *Stachybotris chartarum* or other molds. However, the term "Hazardous Substance" does not include (A) either a substance used in cleaning and maintenance or a common office product if the quantity, storage and manner of its use are customary, prudent, and do not violate applicable law, or (B) automotive motor oil in immaterial quantities, if leaked from vehicles in the ordinary course of operation and cleaned up in accordance with reasonable property management procedures and in a manner that violates no applicable law.

1.13 "Interior Property Line" shall mean and refer to any Lot perimeter or exterior boundary except a Street Property Line as that term is defined herein, and shall be synonymous with "rear property line," "side line," and "side property line" unless the context clearly requires a different meaning.

1.14 "Landscape Areas" shall mean and refer to all areas located:

- (a) within Street esplanades located within all future Streets, if any, in The Pointe,
- (b) within any Parkway Strip, as that term is defined herein;
- (c) within any Green Area, as that term is defined herein; and
- (d) within all Entrances to The Pointe.

1.15 "Light Manufacturing" shall mean and refer to any industrial operation or use, not otherwise specifically prohibited herein, which is: (a) reasonably compatible with adjacent office uses; (b) conducted entirely within a building or buildings that have an external design in conformity and harmony with neighboring office buildings; (c) does not cause or produce a nuisance or annoyance to the occupants of neighboring office buildings, such as, without limitation, noise, dust or odors; and (d) which does not involve the use of any Hazardous Substance, except that notwithstanding the prohibition on use of any Hazardous Substance, the assembly and shipping of computer boards or components shall be an acceptable use, to the extent such use complies with clauses (a), (b) and (c) of this section 1.15.

1.16 "Lot" shall mean any of Lots 1, 2, 3, 4, 5, 6, or 7 of The Pointe, a Commercial Subdivision, as created by and depicted on the Plat.

1.17 "Parking Easement" shall mean the easement(s) described in section 6.3 hereof.

1.18 "Parkway Strip" shall mean and refer to the area located between the nearest curb (or edge of pavement if no curb exists) in the Street or Streets abutting an individual Lot and the Street Property Line or Right-of-Way line.

1.19 "Plat" shall mean the official subdivision plat for The Pointe, recorded in the office of the Salt Lake County Recorder, as the same may be amended from time to time.

1.20 "Plat Easements" shall mean those easements which are shown on the Plat.

1.21 "Property" and/or "the above described property" shall mean and refer to The Pointe, as that term is defined herein, and all resubdivisions and re-plats thereof or of any part thereof.

1.22 "Property Owner" shall mean and refer to the owner or owners of one or more Lots in The Pointe.

1.23 "The Pointe" shall mean and refer collectively to all of the Lots and tracts described hereinabove, together with any adjoining or adjacent tracts or parcels of land hereinafter annexed and subjected hereto.

1.24 "Storm Drain System" shall mean the system and improvements described in section 6.5 hereof.

1.25 "Storm Water Runoff Easement" shall mean the easement(s) described in section 6.4 hereof.

1.26 "Street" or "Streets" shall mean and refer to (a) the streets and thoroughfares shown, respectively, upon the Plat (including without limitation Corporate Way and Scenic Pointe Drive) and (b) any and all public streets that may or might be dedicated and/or opened to public use in The Pointe during the term and any extended term of these Basic Restrictions, and the term shall be deemed to be synonymous with "road," "boulevard," or "drive" unless the context clearly requires different meaning.

1.27 "Street Property Line" shall mean and refer to any Lot perimeter or exterior boundary that coincides with the boundary of a Street right-of-way, inclusive of future Streets, if any, in The Pointe.

1.28 "Structure" shall mean and refer to any manmade object or piece of work composed of parts joined together or constructed in some definite manner, including, without limitation, buildings, regardless of the use made thereof.

1.29 "Uniform Plan" shall be synonymous with "Basic Restrictions."

1.30 "Utility Easement" shall mean the easement(s) described in section 6.6 hereof.

## **PART 2 - RESERVATIONS**

2.1 There is hereby expressly reserved unto Developer, its successors and assigns, as part of the Uniform Plan established hereby, the same as if such reserved rights and estates were incorporated in every contract, deed, lease and other form of grant, dedication or conveyance of the Property or any part thereof, all those certain rights, titles and estates as follows:

(a) Subject to the right of the City of Draper, Salt Lake County and/or the State of Utah to restrict such use, Developer reserves unto itself and the Architectural Control Committee, in perpetuity, all easements, rights-of-way and similar rights and easements whatever necessary or required in the Landscape Areas within The Pointe for the installation, replacement, cultivation, fertilization, irrigation and/or maintenance of the landscaping, entrance markers and other landscaped objects, in accordance with the Basic Landscape Plan and/or for the construction, installation, repair or replacement of a sprinkler system for which the Architectural Control Committee has operational responsibility as provided herein.

(b) Developer reserves unto itself, its successors and assigns, as the owners thereof, the right to dedicate and/or grant additional easements and rights-of-way, either public or private, or both, for streets, drives, roads and/or utilities in, under, over and across any Lot, tract or parcel of land, or any combination thereof, in The Pointe, and Developer further reserves unto itself, its successors and assigns, as the owners thereof, the right to impose additional restrictions upon any such Lot, tract or parcel of land, or any combination thereof, provided that no such reserved right shall survive the sale and/or conveyance by Developer of any Lot, tract, reserve or parcel of land in The Pointe unless such right is expressly reserved in the contract and/or deed evidencing and effecting such sale and/or conveyance of such Lot, tract, reserve or parcel of land. All such additional dedications, grants and/or restrictions shall be made and created by separate instrument for such purposes, or same may be incorporated in any deed or deeds conveying any of said property.

## **PART 3 - COMMON IMPROVEMENT CHARGES**

3.1 Each Property Owner shall be assessed a proportionate amount of the costs of operation and maintenance (including without limitation any utility charges incurred in the operation and maintenance) of any Common or Community Improvements which are or may be installed by the Developer or the Architectural Control Committee. Each Property Owner shall be assessed a proportionate amount of the costs of repairs to Common and Community Improvements, except that if any Property Owner or its tenant causes damage to a Common or Community Improvement, that Property Owner alone will pay for the cost of the repair. If, after reasonable efforts, the Architectural Control Committee is unable to collect the cost of the repair from the Property Owner who caused (or whose tenant caused) the damage, then the Architectural Control Committee may assess all Property Owners for their proportionate share of the repair cost.

3.2 Common and Community Improvements shall be defined as and shall be limited to include:

(a) Signs identifying The Pointe;

(b) Decorative fountains, flag poles, ponds and landscaping at intersections or frontages of Streets not for the exclusive use of or enjoyment by a Property Owner as part of a Lot;

(c) Streets;

(d) Street lighting;

(e) The Storm Drain System;

(f) Any additional improvements installed by the Developer along frontages of streets which are intended to benefit the image of The Pointe through identification or beautification and which, at the time of installation, are so designated in a written notice recorded in the office of the Salt Lake County Recorder's office describing the improvements and their location whether or not the improvements are installed on a Lot or on other ground; and

(g) All reasonable administrative and out-of-pocket expenses and overhead incurred in connection with any of the foregoing.

If any of the foregoing improvements are installed on a Lot, the designation that they are Common or Community Improvements shall have no effect on the ownership of the property upon which they are installed.

3.3 Each individual Property Owner's proportionate amount of the assessment shall be determined by dividing the assessed value of the individual property (for property tax purposes) by the total assessed value of the entire Park and multiplying the costs for maintenance, operation and repair by the resulting ratio. If separate assessed values are not available for Lots, the Architectural Control Committee may, at its option, use an estimated value for the purpose of determining proportionate shares.

3.4 The assessment shall be paid by the Property Owner or Owners of record to the Architectural Control Committee, its successors or assigns, in Draper, Utah, and shall be due and payable within 30 days after written notice thereof throughout the term and all extensions of the term of these Basic Restrictions, and each said Property Owner shall be personally liable for the payment thereof.

3.5 Any payment not received by the Architectural Control Committee within the thirty (30) days referred to above, shall be delinquent. All delinquent assessments, together with late charges, interest, costs and reasonable attorney's fees incurred in collecting delinquent assessments shall be the personal obligation of the property owner of record at the time when the assessments fall due and shall bear interest from the date of delinquency at eighteen percent (18%) per annum, until paid.

3.6 The obligation of the Property Owner to pay the assessments for maintenance, repair and operation of the common or community improvements, shall constitute a covenant running with the Lot.

3.7 If there is a delinquency in the payment of any assessment, all amounts that are delinquent, together with interest specified above, costs of collection and reasonable attorney's fees shall be a lien against the Lot of the Property Owner upon recordation of a Notice of Delinquent Assessment signed by an authorized representative of the Architectural Control Committee. Such lien shall be prior to all other liens and encumbrances except:

(a) Property taxes and special assessments and/or special District liens for sewer or water, etc.

(b) Deeds of Trust, Security Agreements, Mortgages and/or other liens recorded prior to the date that the Notice of Delinquent Assessment was recorded.

3.8 The Architectural Control Committee may bring a judicial action to foreclose the lien described herein or at its option may bring a suit to recover a money judgment for unpaid assessments together with interest, costs and reasonable attorney's fees. Such suit shall be maintainable without waiving the lien securing the unpaid assessments.

3.9 In a voluntary conveyance, the Grantee of a property owner shall be jointly and severally liable with the property owner (Grantor) for all unpaid assessments.

3.10 The judgment of the Architectural Control Committee, its successors and assigns concerning the expenditure of said assessments shall be final, so long as such judgment is exercised in good faith. Nothing herein contained shall be construed to create or impose any restriction, limitation or priority upon the application thereof. The enumeration of uses of the assessment hereinabove carries no obligation to provide any of such uses except to the extent of funds actually received and available and to the extent of a community or common need therefor.

#### **PART 4 - RESTRICTIONS, COVENANTS AND CONDITIONS**

4.1 Uses. From and after the date of recording hereof in the office of the Salt Lake County Recorder, and except for any existing use or uses as of said date:

(a) No Lot, tract or other parcel of land and no building or other improvement situated thereon shall be used for any purpose other than office, retail, or Light Manufacturing as that term is defined herein.

(b) No activity shall be carried on or permitted upon any Lot or within any building, buildings or other improvements situated thereon, which is (i) offensive beyond the limits of the Lot, by reason of odor, fumes, smoke, dust, noise, electro-mechanical or electromagnetic disturbance, radiation, air or water pollution; or (ii) is hazardous on account of excessive danger of fire or explosion; nor shall anything be done thereon which may be or may become a common law nuisance to the neighborhood or to the other Property Owners.

(c) No structure of a temporary character, including, without limitation, trailer, mobile home, tent, construction shack, and portable building, shall be placed or used on any Lot except during construction of the permanent building or buildings to be erected on any Lot, and then only in strict accordance with the rules and regulations governing the use and maintenance of temporary offices, storage areas, yards and similar interim construction facilities

as published from time to time by the Architectural Control Committee and available in typewritten or printed form, without charge, to any Property Owner or his duly authorized representative at the principal office of the Architectural Control Committee.

(d) No metal building shall be erected, placed or used on any Lot.

4.2 Dumping of garbage, trash or rubbish on any Lot is strictly prohibited. All areas except those containing non-negotiable terrain (such as creek banks and gullies) or a density of trees which interferes with or restricts mowing, on all undeveloped Lots shall be kept free and clear of weeds and grass over twelve (12) inches high; provided, however, that the area between the Street Property Line(s) and a line parallel thereto at a distance of fifty (50) feet and all Parkway Strips on all undeveloped Lots shall be kept free and clear of all weeds and grass over twelve (12) inches high regardless of whether such area contains non-negotiable terrain (such as creek banks and gullies) or a density of trees which interferes with or restricts mowing. The Architectural Control Committee may require that any Lot be mowed, cleaned and cleared, at the property owner's expense, from time to time in order to comply with the requirements of this subsection (f).

#### 4.3 Setback Lines and Landscape Requirements in Setback Areas.

(a) All buildings and other structures within The Pointe shall be constructed in conformity with the setback lines as required by Draper City except where the Uniform Plan or the Basic Landscape Plan requires greater setbacks.

(b) The Front Setback Area may contain parking if approved by the Architectural Control Committee, underground utilities, paths, jogging trails and walks for pedestrian ingress and egress, and paved access drives for vehicular ingress and egress across the Parkway strip and the Front Setback area, provided, however, that: (i) under no circumstances shall there be more than one (1) such access drive and one (1) such walk or path across the Parkway Strip and the Front Setback Area providing street access, per each 200 linear feet of frontage, on a cumulative basis unless otherwise approved by the Architectural Control Committee; (ii) the unpaved portion of the Front Setback Area between the Street Property line and the front setback line shall be landscaped and/or preserved as a Green Area in accordance with the Basic Landscape Plan and may contain landscape structures, materials and objects permitted or specified in the Basic Landscape Plan, but such Front Setback Area shall contain no other structure that is not directly related or pertinent to one or more of the foregoing permitted structures; (iii) in no event shall any paved access drive located within said Front Setback Area parallel the abutting Street, and in no event shall more than fifteen percent (15%) of the entire Front Setback Area be paved for any purpose except for parking approved by the Architectural Control Committee; and (iv) it is not the intention hereby to dedicate the Front Setback Area, or any part thereof, to public use, and no such dedication and no easement for the benefit of the public or the Architectural Control Committee or anyone else shall be deemed to have been granted or dedicated by the provisions of this subsection.

(c) Parking. Adequate off-street parking shall be provided to accommodate all parking needs of and for the occupants, employees, visitors and invitees on each Lot, irrespective of the use made thereof. The intent of this provision is to eliminate the need for any



on-street parking. Without limiting the generality of the foregoing, parking shall not be permitted within any Landscape Area, including, without limitation, Parkway Strips and Green Areas.

4.4 Loading Docks. Loading docks will not be permitted to face any Street, and provision must be made for handling all freight in the rear or on the side of the Lot not abutting a Street.

#### 4.5 Signs.

(a) Except as hereinafter expressly provided to the contrary, all signs on a Lot shall be attached to the building constructed thereon, parallel to and contiguous with its wall, and shall not project above its roof line, except where the architectural facade projects above the roof line, but in no event shall any sign project above the facade. No sign of a flashing or moving character shall be attached to any building and no sign shall be painted on the wall of any building. No temporary sign of any type shall be attached to any building, except that in conjunction with the construction, sale or leasing of a building, one temporary sign publicizing such construction, sale or leasing shall be permitted per Street front, provided that any such temporary sign shall not exceed one hundred (100) square feet per sign face, and provided further that the design and location thereof shall be approved by Developer.

(b) No detached sign, billboard or other advertising device of any character shall be erected on any Lot except one or more permanent signs may be set down and based upon a landscape berm, provided that:

(i) no such sign shall have more than four (4) faces,

(ii) each such sign shall be illuminated, and

(iii) not more than one such sign per Street front or one such sign per three hundred (300) linear feet (or part thereof) shall be permitted on any Lot. Each such berm and free standing sign situated thereon shall be designed so as to harmonize with the architecture of the building or buildings and the landscaping on the Lot, as well as the surrounding landscaping, and shall be subject to approval by Developer. In no event shall any such free standing sign be placed on any pole or be of a flashing or moving character, and no such sign shall be painted on the sign board surface.

(c) No temporary or pole signs of any type and no sign of a flashing or moving character shall be installed or permitted to remain on any Lot or any part thereof, except that in conjunction with the construction, sale or leasing of a building, one temporary sign publicizing such construction, sale or leasing shall be permitted on the Lot, provided that the design, location and size of any such temporary sign shall be subject to approval by Developer.

(d) As stipulated in Section 5.2 herein and hereinabove, Developer has reserved the right in and for the Architectural Control Committee to approve the size, type, design and location of all signs, including the signs attached to buildings and detached, free standing signs on any Lots.

(e) Except where the context requires a different meaning, the foregoing provisions of this Section 4.5 are not intended to regulate, limit or restrict:

(i) signs identifying and/or publicizing The Pointe which are erected and/or maintained by the Developer or the Architectural Control Committee, or

(ii) signs that are functional and that are of such size and are so located on the interior of the Lot, such as, without limitation, traffic control signs, directional signs and safety signs, or

(iii) signs or markers installed by the Developer or the Architectural Control Committee identifying The Pointe or any Street or amenity therein, or information signs such as, without limitation, signs and markers shown in the Basic Landscape Plan, signs identifying jogging trails, nature trails and pedestrian crossings.

4.6 All signs in The Pointe must comply with the applicable requirements of Draper City.

4.7 Street Lighting and Electric Service.

(a) The Developer reserves the right (but shall have no obligation) in behalf of itself and its successors and assigns, including, without limitation, the Architectural Control Committee, to install street lights in any Street in The Pointe; provided, however, that all pole mounted street lights over thirty (30) feet in height shall be supported by metal or precast lighting standards that are approved by the City of Draper, and all other street lights shall be mounted and constructed of materials as specified in the Basic Landscape Plan.

(b) No above ground electrical and/or communication pole shall be permitted on any Lot. All electrical and/or communication lines shall be underground.

4.8 Screening.

(a) No article, goods, materials, supplies or equipment, including, without limitation, business or personal use vehicles or trailers or other mobile machines or equipment, shall be stored in any area on any Lot, or on any roof, except inside an enclosed building or behind an approved visual barrier screening such area from view of the adjoining properties, both horizontally and vertically, and screening such area from any Street. Said screening barrier shall be of a design and height and constructed of materials approved by the Architectural Control Committee prior to the placement thereof on such site. All such screened uncovered storage areas shall be limited to the rear two-thirds of the Lot, but under no circumstances shall any materials, machines or equipment be stored within forty (40) feet of any Street. Within the meaning of this section 4.7(a), "uncovered storage areas" shall not include uncovered parking areas that are permitted under other provisions of these restrictions so long as the uncovered parking area is used principally for the parking and/or storage of passenger automobiles, vans, trucks and other similar low profile vehicles. Provided, however, the foregoing provisions of this Section 4.7(a) to the contrary notwithstanding, roof-mounted mechanical equipment of not more than four (4) feet six (6) inches in height, set back no less than thirty (30) feet from the edge of the roof, shall be permitted.

(b) Loading docks, water towers, cooling towers, communication towers, storage tanks, processing equipment, air conditioning equipment, skylights, ventilators, transformers and communication equipment and other similar structures, fixtures and/or equipment exceeding three (3) feet six (6) inches in height shall be architecturally compatible or shall be located behind a visual barrier screening such structure, fixture or equipment from the view of adjoining properties and from any Street, both horizontally and vertically, to the height of material being screened.

(c) The entrances to all garages and carports located on Lots must be screened from view.

#### 4.9 Landscaping.

(a) The Property Owner of each Lot shall landscape and maintain his Lot, the Parkway Strip, and the Front Setback Area in accordance with the Basic Landscape Plan.

(b) Subject only to reasonable adjustment for seasonal planting requirements, all Landscape Areas designated in Section 4.8(a) above and in this Section 4.8(b), shall be completed within ninety (90) days after occupancy or completion of the building or buildings erected on the respective Lots, whichever first occurs. For the purposes of this Section 4.8(b), where the entire Lot is not developed at one time, said Landscape Areas shall be required to be completed within the time aforesaid as to that part of the Lot on which such building or buildings so completed are located according to the building plans that, if required, were submitted to and approved by the City of Draper, Salt Lake County, or other political subdivision of the State of Utah having jurisdiction, precedent to its issuance of a building permit for such building or buildings.

(c) Subject to the availability of funds, the Architectural Control Committee shall operate, maintain, repair and replace the sprinkler systems, if any, installed by Developer; provided that the foregoing shall not be construed to mean that Developer is obligated to install any such sprinkler systems.

(d) All landscaping, including the entrance markers, will be installed in accordance with the Basic Landscape Plan in The Pointe published by the Developer and available at no charge at the office of the Developer.

(e) All landscaping covered in this section 4.8, including owner-maintained and Architectural Control Committee-maintained landscaping, will be kept and maintained in accordance with the standards stipulated in the Basic Landscape Plan at all times.

4.10 Maintenance. Buildings, landscaping, and other improvements shall be continuously maintained so as to preserve a well-kept appearance. If the Architectural Control Committee is not satisfied with the level of maintenance on a Lot or other parcel of property, it may so notify the Property Owner in writing and the Property Owner shall have thirty (30) days thereafter in which to restore its Lot, other parcel or improvements to a level of maintenance acceptable to the Architectural Control Committee. If in the Architectural Control Committee's opinion the Property Owner has failed to bring the Lot, other parcel or improvements to an acceptable standard within such thirty (30) day period, the Architectural Control Committee may

order the necessary work performed at the Property Owner's expense; multiple Owners shall be jointly and severally liable for such expenses.

4.11 Defaulting Property Owner. If any Property Owner (hereinafter in this paragraph called the "Defaulting Property Owner") shall be in default under any of the following provisions: Section 4.1(f), 4.8(a), 4.8(b), 4.8(d), or 4.8(e) for fifteen (15) days after written notice of default given by the Architectural Control Committee or, if such default shall be of such a nature that the same cannot, as a practical matter, be cured within such fifteen (15) day period, and the Defaulting Property Owner receiving such notice of default shall not within such fifteen (15) day period commence the curing of such default and thereafter with due diligence and dispatch continuously prosecute the curing of such default to completion, then the Architectural Control Committee may take appropriate action to cure such default, including, without limitation:

(a) the performance of landscape maintenance, improvement maintenance or other care,

(b) hiring of independent contractors to mow any Lot and to remove any trash, rubbish or garbage therefrom, and

(c) the entry onto the premises of the Defaulting Property Owner for the purposes herein stated, and for the limited purpose of exercising all rights of self help granted it under this Section 4.10. The Architectural Control Committee is hereby expressly granted an easement in, under, over and across the Property of the Defaulting Property Owner for entry upon, and for ingress and egress through any portion of the Defaulting Property Owner's property, with men, materials and equipment, to the extent reasonably necessary in the exercise of such rights. The Defaulting Property Owner shall, upon demand reimburse the Architectural Control Committee for all reasonable costs and expenses incurred by the latter in the exercise of its rights under the provisions of this Section 4.10, and such reimbursement shall, at the option of the Architectural Control Committee, be secured by a lien upon the Defaulting Property Owner's interest and estate in The Pointe, in the same order or priority and with the same limited effect with respect to any existing or future first lien and/or security interest, as provided in PART 3 herein for securing payment of common or community improvement charges. Upon request and payment of reasonable cost, the Architectural Control Committee will execute appropriate documents evidencing the subordination of the lien herein created and any other liens and security interests held by the Architectural Control Committee pursuant hereto, in form suitable for recording.

## **PART 5 - ARCHITECTURAL AND DEVELOPMENT CONTROL**

5.1 No Improvements, as that term is defined below, shall be commenced, erected, placed or maintained on any Lot, tract or other parcel of land subject to the within covenants and restrictions, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications showing plat layout, structural design, exterior elevations, signs, landscaping and screening therefor shall have been submitted to and approved in writing by the Architectural Control Committee of The Pointe based upon the criteria established herein. Two (2) complete sets of such plans and specifications shall be submitted in writing over the signature of the

Owner or lessee, or the signature of the agent of the Owner or lessee, of the particular Lot, tract or other parcel of land to be improved. The foregoing shall apply to any improvements now existing only to the extent that the same shall be altered or remodeled.

5.2 Architectural review shall be limited to and approved or disapproval shall be based on the following criteria.

(a) The criteria established in PART 4 herein, including, without limitation, the following:

- (i) use;
- (ii) setback lines and height limitations;
- (iii) parking;
- (iv) loading docks;
- (v) signs;
- (vi) exterior lighting;
- (vii) screening;
- (viii) landscaping;
- (ix) building materials; and
- (x) architectural elevations

(b) Adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring Lots, tracts and other parcels of land; relation of topography, grade and finished ground elevations of the Lot being improved to that of adjoining and adjacent Lots, tracts or other parcels of land, proper facing of main elevation with respect to nearest Street or Streets, and conformity of the plans and specifications to the purpose, general plan and intent as set forth herein and expressed hereby and in such additional, separate restrictive covenants and restrictions as may apply to the Lot.

(c) The Architectural Control Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

5.3 If the Architectural Control Committee fails to either approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the Architectural Control Committee has approved said plans and specifications, subject, however, to all of the covenants, conditions and restrictions set forth herein and in the additional separate restrictions, if any, for the particular Lot or re-subdivision thereof in The Pointe or on which such improvements are to be situated.

5.4 It is understood that the Architectural Control Committee may delegate all or part of its authority to review building and improvement plans so submitted and that the Architectural Control Committee may retain the services of architects from time to time for the purpose of reviewing such plans and making recommendations as to approval, disapproval or modification thereof and that neither the Architectural Control Committee nor any agent thereof, nor any advisor thereto, shall be liable in damages to anyone submitting plans for approval, or to any owner, lessee or occupant of land affected by these covenants, by reason of mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to the Architectural Control Committee for approval agrees, by the submission of such plans, and every owner, lessee and/or occupant of any such property agrees by acquiring title thereto, or any leasehold or other interest therein, that he will not bring any action or suit against the Architectural Control Committee to recover any such damages.

5.5 An architectural review fee in the amount of Eight Mills (\$0.008) per square foot of Building Area shall be paid to the Architectural Control Committee at the time plans are submitted for approval.

5.6 As used in this PART 5, "Improvements" shall mean and include buildings, out-buildings, parking areas, loading areas, fences, walls, mass plantings, poles, exterior lighting, signs and any other similar structure.

5.7 Initially, the Developer shall be the Architectural Control Committee. For so long as the Developer owns at least 35% of the assessed value of The Pointe according to the real property tax assessment records of Salt Lake County, Utah, the Developer may continue to serve as the Architectural Control Committee or may appoint a separate Architectural Control Committee which shall consist of three members. At such time, if any, that Developer no longer owns at least 35% of the assessed value of The Pointe, a majority of Owners shall appoint an Architectural Control Committee, which committee shall consist of three members who shall serve so long as appointed or until removed by a majority of owners. All actions of the Architectural Control Committee shall require the concurrence of at least two members to be binding. The Architectural Control Committee may, however, appoint a representative to fulfill any administrative function with which it is charged under the Basic Restrictions with the exception of those items specified in this PART 5.

## **PART 6 - EASEMENTS**

6.1 Utility, sewer and any other easements shown on the Plat (the "Plat Easements") are hereby reserved as shown on the Plat. The Plat Easements may be used by the Developer, the Architectural Control Committee, and each Property Owner for the benefit of the Property and of each Lot.

6.2 In addition to the Plat Easements, a non-exclusive easement (the "Access Easement") is hereby reserved over and across Corporate Way and Scenic Pointe Drive for the passage and accommodation of pedestrians and vehicles (but not for parking of vehicles). The Access Easement may be used by Developer, the Architectural Control Committee, each Property Owner, the tenants of the Property Owners, and the guests and invitees of any of the

foregoing (collectively, the "Permittees"), for ingress to and egress from the Property and each Lot. Access over and across Corporate Way and Scenic Pointe Drive shall not be blocked or impeded except in emergency situations not lasting longer than 48 hours, or as may be temporarily necessary for maintenance or repairs, or as may be temporarily necessary in the reasonable judgment of the Architectural Control Committee to prevent a dedication of said streets to the public and to protect and preserve the private nature of said streets.

### 6.3 Parking Easement.

(a) There is hereby reserved, and each Property Owner hereby grants to each other Property Owner, the Developer, and the Architectural Control Committee, a non-exclusive easement for the passage of vehicles and pedestrians and parking of vehicles (the "Parking Easement") over and across those portions of the granting Property Owner's Lot which are now improved, or may be hereafter improved with driveways, approaches, parking lots, parking stalls, roadways and paved surfaces, as such configuration exists or is actually constructed and altered from time to time by the Property Owner (such areas being herein referred to as the "Parking Easement Area"). The Parking Easement shall not extend onto, and the Parking Easement Area shall not include, any area within a Building Envelope or any portion of a Lot upon which is located a building, the exterior apron of a building, landscaping and/or other related building improvements. The Parking Easement may be used by Permittees for the passage and parking of vehicles, subject to the following: (a) all parking shall be temporary and no vehicle be stored, displayed for sale, or remain continuously parked in the Parking Easement Area for longer than 24 hours; (b) no inoperable vehicle shall be left on the Parking Easement Area; (c) no vehicle larger than a standard pick-up truck shall remain parked for more than one hour on the Parking Easement Area other than at loading docks intended specifically for the loading and unloading of vehicles; (d) vehicles shall only be parked in designated parking stalls and no vehicle shall be parked so as to obstruct a driveway, road or approach; and (e) use of the Parking Easement shall be subject to such other rules and restrictions as may be imposed from time to time by the Architectural Control Committee, in its discretion, in order to preserve the quality of the Property and ensure the orderly use of the Parking Easement and Parking Easement Area.

(b) Except for landscaping, curbing and other facility improvements as may be required by municipalities or governmental requirements, no wall, fences or barriers of any kind shall be constructed or maintained on the Parking Easement Area, or any portion thereof, which shall prevent or impair the use or exercise of the Parking Easement, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between Lots; subject, however, to the following exceptions: (i) reasonable traffic controls approved in advance by the Architectural Control Committee as may be necessary to guide and control the orderly flow of traffic may be installed so long as the Parking Easement Area is not unreasonably closed or blocked, and (ii) incidental, temporary encroachments upon the Parking Easement Area which may occur as result of the use of ladders, scaffolding, storefront barricades and similar facilities, or for incidental, immaterial and temporary encroachments upon the Parking Easement Area which may occur in conjunction with the construction, maintenance or repair of buildings and improvements are permitted so long as such construction, maintenance or repair is being diligently pursued.

6.4 Each Property Owner hereby grants and conveys to each other Property Owner owning an adjacent Lot the right and easement to discharge surface storm water drainage and/or runoff from the grantee's Lot over, upon and across the paved and/or landscaped portions of the grantor's Lot (but not upon the Building Envelope or within four (4) feet of a Building Envelope) (the "Storm Water Runoff Easement"), subject to the following conditions and terms: After recording of this Declaration, no Property Owner shall alter or permit to be altered the surface of its Lot or the drainage/retention system constructed on its Lot if such alteration would materially increase the flow of surface water onto an adjacent Lot either within the aggregate or by directing the flow of surface water to a limited area, without the prior written approval of the Property Owner of said adjacent Lot.

6.5 A private storm drain system has been or will be constructed on the Property (including without limitation in the Streets and on the Lots), consisting of (without limitation) inlets, grates, catchbasins, manholes, pipes, outfalls, swales and retention basins, all as shown on the drawings prepared by Dominion Engineering Associates, L.C., labeled Project No. 1408 and dated November 7, 2008, a copy of which is attached hereto as Exhibit "B" and incorporated by reference herein (the "Storm Drain System"). An easement is hereby reserved for the use, enjoyment, maintenance and repair of the Storm Drain System by each Property Owner, the Developer, and the Architectural Control Committee, for the benefit of each of the Lots and the Property. Upon request by and at the expense of a Property Owner, the Architectural Control Committee will provide enlarged copies of the Storm Drain System drawing which is attached hereto. The Storm Drain System is currently stubbed into each Lot. Each Property Owner shall, at its own expense and at the time that it improves its Lot, tie into the Storm Drain System from its Lot in order to allow storm water drainage from its Lot.

6.6 There is hereby reserved, and each Property Owner hereby grants to each other Property Owner, the Developer, and the Architectural Control Committee, a non-exclusive easement for the installation and maintenance and repair of underground utility lines, including without limitation underground lines for electric power, gas, water, sewer, cable, telephone and other communications (the "Utility Easement") over and across all portions of the granting Property Owner's Lot other than the Building Envelopes shown on Exhibit "A", the areas within four (4) feet of a Building Envelope, and those portions of the Lot, if any, upon which there is located (prior to installation of the utility line) a building, the exterior apron of a building, or other related building improvements. In the event that a Property Owner shall desire to relocate a utility line on the Property Owner's Lot, the Property Owner shall have the right to do so at the Property Owner's sole expense and upon thirty (30) days prior written notice to the Owners of all Lots served by such line(s) (the "Utility Users"), provided that such relocation: (a) shall not be commenced during the months of November, December or January; (b) shall not interfere with or diminish the utility service during business hours and if an electrical line/computer line is being relocated, then the Property Owner shall coordinate such interruption with each Utility User to eliminate any detrimental effects; (c) shall not reduce or unreasonably impair the usefulness or function of such utility line; (d) shall be performed without cost or expense to the Utility Users; (e) shall be completed using materials and design standards which equal or exceed those originally used; and (f) shall have been approved by the provider of such utility service and the appropriate governmental authorities. Documentation of the relocated utility line, including the furnishing of an "as-built" survey to all Utility Users, shall be made at the relocating Property



Owner's expense and shall be accomplished as soon as possible following completion of such relocation.

6.7 There is hereby reserved, and each Property Owner hereby grants to each other Property Owner, the Developer, and the Architectural Control Committee, a non-exclusive easement to operate, maintain and make necessary repairs to Common and Community Improvements located on the granting Property Owner's Lot(s) and to enter upon said Lot(s) as reasonably necessary to exercise this easement.

6.8 The easements established in this Part 6 shall be appurtenant to and for the benefit of each Lot, and shall be binding on, enforceable against and burden the Property. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration:

(a) Each Property Owner reserves the right to close-off any portion of its Lot for such reasonable period of time as may be legally necessary, in the opinion of such Property Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Lot, such Property Owner shall give written notice to each other Property Owner of its intention to do so, and shall attempt to coordinate such closing-off with each other Property Owner so that no unreasonable interference with the passage of pedestrians or vehicles shall occur;

(b) Each Property Owner reserves the right at any time and from time to time to exclude and restrain any person who is not a Permittee from using its Lot or any portion thereof; and

(c) Each Property Owner reserves the right to temporarily erect or place barriers in and around areas on its Lot which are being constructed and/or repaired in order to insure either safety of persons or protection of property.

## **PART 7 - ENFORCEMENT**

7.1 The foregoing covenants, conditions, charges and restrictions shall run with the land and shall be binding upon and inure to the benefit of Developer and its successors and assigns, for the term hereinafter provided.

7.2 Any Property Owner or the Architectural Control Committee as the representative of the Property Owners in The Pointe, may enforce this Uniform Plan and the Basic Restrictions set forth herein either by proceedings at law or in equity, or both, against any person, firm or entity violating or attempting to violate the same or any part hereof, and any such violation or attempted violation of the foregoing Uniform Plan and Basic Restrictions may be enjoined or abated by proceedings at law or in equity brought by a Property Owner individually or by the Architectural Control Committee in its representative capacity in behalf of the Property Owners to whom the benefits of said covenants and restrictions shall inure as hereinabove provided.

7.3 In any proceedings to enforce or restrain the violation of this Uniform Plan and the Basic Restrictions set forth herein, or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees of the prevailing party or parties, in such amount as may be

fixed by the court; provided, however, that no Property Owner shall be liable for any such costs or attorney's fees, or any part thereof unless he is a principal party to the suit.

7.4 The duly authorized representative or representatives of the Architectural Control Committee may from time to time, at any reasonable hour or hours, enter and inspect any Property subject to this Uniform Plan and the Basic Restrictions set forth herein for the purpose of ascertaining compliance herewith.

7.5 Failure of the Architectural Control Committee or any Property Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other restriction.

7.6 The foregoing provisions of this PART 7 notwithstanding, in the event that the Architectural Control Committee fails, neglects or refuses to enforce this Uniform Plan and the Basic Restrictions set forth herein, any individual Property Owner may enforce same in the same manner as the Architectural Control Committee could have done under Section 7.2 above, provided that a Property Owner is not authorized hereby to represent the other Property Owners, and further provided that a Property Owner shall be responsible for costs and attorney's fees under Section 7.3 herein, if the Property Owner or Owners constitute the losing party or parties.

## **PART 8 - GENERAL CONDITIONS**

8.1 Notwithstanding any provision herein to the contrary, it is not the intention hereby to grant to the public any right or privilege in any existing easement that the public does not have therein or to create by implication or otherwise any new easement in The Pointe, or any part thereof, and all such rights, privileges and easements created hereby shall constitute the private rights, privileges and easements of the Property Owners and Architectural Control Committee.

8.2 The Developer does hereby make, constitute and appoint the Architectural Control Committee as the sole and exclusive administrator of the Uniform Plan and Basic Restrictions adopted and established hereby, giving and granting unto said Architectural Control Committee full power and authority to do and perform each and every act and thing whatsoever requisite and necessary to be done in and about the premises, including, without limitation, the power to collect and receipt for said common improvement charges and to appropriate the funds derived therefrom to the uses and purposes hereinabove set forth. It is understood that to the extent permitted by law, the Architectural Control Committee may or might delegate all or any part of the powers and authorities granted hereby unto independent agents or contractors who shall actually carry out and perform the services, duties and responsibilities of the Architectural Control Committee, and except as provided above, nothing herein contained is intended to preclude, nor shall same be construed to prevent or preclude any such delegation of authority or power by said Architectural Control Committee. In the event that at any time the Architectural Control Committee ceases to exist, a successor committee may be appointed as provided above. The Architectural Control Committee may incorporate itself as a non-profit corporation to carry out its authority hereunder.

8.3 Amendment:

(a) Subject to the provisions of subsection (b) of this section 8.3, but notwithstanding any other provisions of this Declaration, this Declaration and the Uniform Plan and the Basic Restrictions contained herein may be terminated, extended, modified and/or amended as to all or any part of The Pointe at any time and from time to time thereafter by agreement to terminate, extend, modify and/or amend said Uniform Plan and Basic Restrictions, evidenced by instrument signed by then Property Owners possessing three-fourths (3/4) of the assessed value of The Pointe according to the real property tax assessment records of Salt Lake County, Utah, or, if assessed values are not available for the separate Lots, Property Owners possessing three-fourths of the square footage of finished building space existing within The Pointe. The foregoing shall not be construed to require a meeting of the Property Owners or any notice thereof, it being sufficient that the action aforesaid be taken without a meeting so long as the instrument aforesaid is signed by the then Property Owners possessing three-fourths (3/4) of the assessed value of The Pointe according to the real property tax assessment records of Salt Lake County, Utah or, if assessed values are not available for the separate Lots, Property Owners possessing three-fourths of the square footage of finished building space existing within The Pointe.

(b) For so long as any debt remains outstanding under that certain loan (the "Transamerica Loan") made by Transamerica Life Insurance Company in the original principal amount of \$15,000,000 and secured by that certain Deed of Trust, Security Agreement and Fixture Filing dated February 16, 2007, executed by TP Building I, LLC, as Trustor, in favor of First American Title Insurance Company, as Trustee, and Transamerica Life Insurance Company, as Beneficiary and recorded February 16, 2007 as Entry No. 10006596 in the Office of the Salt Lake County Recorder, this Declaration and the Uniform Plan and Basic Restrictions herein may not be amended without the prior written consent of the holder of the Transamerica Loan, which consent will not be unreasonably withheld. When all debt owed under the Transamerica Loan has been paid in full, as evidenced by the reconveyance of the above-described Deed of Trust, Security Agreement and Fixture Filing, this subsection (b) will no longer apply.

8.4 Subject to the provisions of Section 8.3 herein, this Uniform Plan and the Basic Restrictions set forth herein shall continue and shall run with the title to the lands covered hereby for a period of forty (40) years from the date the same are filed for record in the Office of the County Recorder of Salt Lake County, Utah, after which time said Uniform Plan and Basic Restrictions shall be automatically extended for successive periods of ten (10) years each, until an instrument, signed by the then Property Owners possessing at least three fourths (3/4) of the assessed value of The Pointe according to the real property tax assessment records of Salt Lake County, Utah (or, if assessed values are not available for the separate Lots, Property Owners possessing three-fourths of the square footage of finished building space existing within The Pointe), has been filed of record in the Office of the County Recorder of Salt Lake County, Utah, agreeing to terminate said Uniform Plan and Basic Restrictions; provided, however, that the foregoing shall not be construed to require a meeting, or notice of any meeting, of the Property Owners for the purposes of this Section 8.4, it being sufficient that the action aforesaid be taken without meeting, so long as the instrument aforesaid is signed by the Property Owners possessing the required three-fourths (3/4) of the assessed value or, if applicable, finished building space.

8.5 Invalidation of any one of the within covenants, conditions, charges or restrictions by judgment or other judicial order to decree shall in nowise affect any of the other provisions hereof, which other provisions shall remain in full force and effect.

8.6 Notwithstanding any of the foregoing provisions of this Uniform Plan to the contrary, Developer does not intend to imply hereby that it will install or be responsible for installing, erecting or making any particular improvement or improvements, such as, without limitation, sidewalks or screening walls, except as specifically set forth herein.

8.7 Captions, section numbers appearing herein are inserted only as a matter of convenience and in nowise define, limit, construe or describe the scope of intent of such sections or subsections, nor in anywise affect the covenants, conditions, charges, encumbrances and restrictions hereinabove set forth.

8.8 Any notice required or permitted to be given hereunder shall be deemed delivered (whether or not actually received) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses below indicated;

**PARTY**

**ADDRESS**

Developer:

Sorenson Associates, The Pointe, LLC  
299 S. Main Street, Suite 2070  
Salt Lake City, Utah 84111

Any Property Owner:

The last address of such Property Owner of which the Developer or the Architectural Control Committee has any written notice from such Property Owner, and if no such notice is given, then the notice to the Property Owner may be given by publication under Public Notices in the classified section of The Deseret News, or any other newspaper of general circulation in Salt Lake County, Utah.

8.9 Personal pronouns are neuter, singular encompasses plural and masculine encompasses opposite, where necessary to the clarity of the various provisions of these covenants and restrictions.

8.10 For all purposes hereof, the term "successors" shall be deemed to include purchasers, assigns, heirs, executors, administrators and legal representatives if the context so requires.

8.11 Developer is undertaking the work of developing a business/research park and incidental improvements within The Pointe. The completion of that work and the sale, rental and other disposal of Lots is essential to the establishment of and welfare of The Pointe as a

business/research park. In order that said work may be completed and The Pointe be developed, nothing herein shall:

(a) Prevent Developer, its contractors, or subcontractors from doing whatever is reasonably necessary or advisable in connection with the completion of said work anywhere within The Pointe; or

(b) Prevent Developer or its representatives from erecting, constructing and maintaining on any part or parts of The Pointe such structures as may be reasonable necessary for the conduct of its business of completing said work and establishing The Pointe as a business/research park and disposing of Lots; or

(c) Prevent Developer from maintaining such sign or signs on any part of The Pointe as may be necessary for the sale, lease, or disposition thereof.

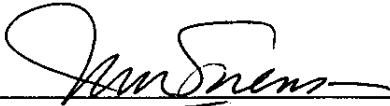
8.12 The layout of The Pointe, including without limitation parking, landscaping, architecture, buildings and other improvements have been approved by Draper City as a commercial site plan. Any changes to the layout must comply with all applicable requirements and approval processes of the City.

#### PART 9 - PROTECTION OF LENDERS

9.1 Mortgagee Protection: A breach of the provisions, restrictions, or requirements hereof shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage or Trust Deed.

EXECUTED as of this 24 day of March, 2009.

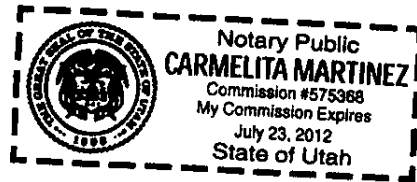
**SORENSEN ASSOCIATES, THE POINTE, LLC,**  
a Utah limited liability company

By:   
Name: JIM SORENSON  
Title: Manager

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

On this 24 day of March, 2009, personally appeared before me Jim Sorenson personally known to me to be a Manager of Sorenson Associates, The Pointe, LLC, who acknowledged to me that he signed the foregoing instrument as Manager for said limited liability company, and acknowledged to me that the said limited liability company executed the same.

*Carmelita Martinez*  
NOTARY PUBLIC



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**EXHIBIT "A"**

**Plat Showing Building Envelopes**

