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ENT 130929:2021 PG 1 of 61
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Jul 27 10:46 am FEE 40.00 BY JR
RECORDED FOR EM COMMERCIAL DEVELOPMENT,

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
OF
MARKETPLACE AT EAGLE MOUNTAIN
TOWN CENTER**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF MARKETPLACE AT EAGLE MOUNTAIN TOWN CENTER (“Declaration”) is made as of this 19 day of July, 2021, by **EM COMMERCIAL DEVELOPMENT, LLC**, a Utah limited liability company (“**Declarant**”) and joined by Monte Vista Ranch, L.C., a Utah limited liability company (“**Master Declarant**”).

A. On October 29, 2009, Master Declarant caused to be recorded that certain Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association, as Entry No. 113261:2009 in the official records of the office of the Utah County Recorder, State of Utah, (the “**Recorder’s Office**”) as amended by that certain Amendment to the Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association also recorded with the Recorder’s Office on December 13, 2010, Entry No. 108314:2010, and as further amended by that certain Second Amendment to the Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association also recorded with the Recorder’s Office on May 25, 2018, Entry No. 49096:2018, and as further amended by that certain Third Amendment to the Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association also recorded with the Recorder’s Office on June 14, 2019, Entry No. 54420:2019, and as further amended by that certain Fourth Amendment to the Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association also recorded with the Recorder’s Office on September 17, 2019, Entry No. 92248:2019, and as further amended by that certain Fifth Amendment to Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association, Inc., also recorded with the Recorder’s Office on November 8, 2019, as Entry No. 117084:2019 (“**Master Declaration**”);

B. The Master Declaration anticipates the formation of various Districts (as defined in the Master Declaration) within the Properties (as defined in the Master Declaration) as part of developing the Properties as an integrated master planned community of residential, commercial, mixed use, and industrial properties;

C. Master Declarant and Declarant are the owners of the real property located in the City of Eagle Mountain, Utah County, State of Utah, which is legally described on **Schedule “A”** attached hereto and incorporated herein by reference (the “**Shopping Center Land**”). Declarant plans to

develop and build the Shopping Center, as defined and described herein, on the Shopping Center Land. All of the Shopping Center Land and uses located thereon shall be subject to the terms and conditions of this Declaration and the Master Declaration;

D. Declarant desires to designate the Shopping Center Land as a separately denominated commercial District subject to the Declaration as provided herein;

E. Declarant desires to restrict the Shopping Center and its uses in accordance with the terms and provisions of this Declaration in order to provide for (i) the orderly development and operation of the Shopping Center, (ii) the construction of compatible improvements in the Shopping Center, (iii) common easements for ingress and egress of pedestrian and vehicular traffic, (iv) reciprocal parking rights, (v) procedures for the maintenance of the Shopping Center, (vi) the organization and operation of an association of Owners, and (vii) such other matters as are provided herein;

F. Declarant and Master Declarant intend that the Shopping Center Land will be subject to the covenants, conditions, restrictions, and easements of this Declaration and the Master Declaration;

G. Master Declarant desires to consent to the imposition of this Declaration upon the Shopping Center Land as required under the terms of the Master Declaration; and

H. Declarant anticipates and intends that an association of Owners known as the Marketplace at Eagle Mountain Town Center Owners' Association, Inc. will be incorporated as a Utah nonprofit corporation under the Utah Revised Nonprofit Corporation Act (Utah Code § 16-6a-101 et seq. ("Act")), as amended from time to time, will operate in accordance with the Association Governing Documents, and shall be a District Association (as defined in the Master Declaration).

NOW THEREFORE, in consideration of the forgoing Recitals, which are incorporated herein by this reference, and the mutual covenants contained in this Declaration, the receipt and sufficiency of which consideration are hereby acknowledged, the Declarant does hereby make and consent to this Declaration as follows:

1. DEFINITIONS; SUBMISSION

1.1 Definitions. The following terms as used in this Declaration shall have the meanings set forth below. Capitalized terms in this Declaration shall have the meanings set forth in this **Section 1.1** or in other provisions of this Declaration. Capitalized terms not otherwise defined in this Declaration but defined in the Master Declaration shall be deemed defined terms herein and shall have the same meaning set forth in the Master Declaration unless the context requires otherwise.

1.1.1 "Applicable Laws": The statutes, laws, ordinances, rules, regulations, orders, ordinances and provisions of the State of Utah, the City and other governmental agencies having jurisdiction over the Shopping Center or the use thereof.

1.1.2 "Approving Person": As defined in **Section 15.9**.

1.1.3 **“Association”**: The association of Owners known as Marketplace at Eagle Mountain Town Center Owners’ Association, Inc., a Utah nonprofit corporation.

1.1.4 **“Association Governing Documents”**: The Master Declaration, this Declaration, Articles of Incorporation of the Association, Bylaws of the Association, Plat, and Rules and Regulations as may be amended from time to time.

1.1.5 **“Authorized Occupant”**: In the singular, any tenant, subtenant, licensee or similar party who is entitled by written agreement to occupy any Floor Area of any Building located within the Shopping Center, or in the plural all or some portion of the same as the context requires.

1.1.6 **“Benefitted Parties”**: Owners of the Shopping Center, their Authorized Occupants, contractors, employees, agents, customers, licensees and invitees.

1.1.7 **“Building(s)”**: Buildings, stores, offices, and commercial structures located upon a Parcel, or where the context requires all Parcels, as the same exist from time to time, including but not limited to each such building’s appurtenant improvements known as Canopy Areas and/or Service Facilities.

1.1.8 **“Canopy Areas”**: Areas located under canopies or roof extensions which extend from a Building, together with any columns or posts supporting the same, all of which shall be constructed, owned, operated and maintained by the Owner of the Building to which the same are attached.

1.1.9 **“Center Sign(s)”**: Monument and/or pylon signs, if any, which will be located in areas allowed by the City and approved by the Consenting Owners and are intended to be utilized by Owners or Qualified Lessees, including without limitation the signs along Pony Express Parkway and/or Eagle Mountain Boulevard.

1.1.10 **“City”**: Eagle Mountain City, Utah County, Utah.

1.1.11 **“Collection Costs”**: As defined in Section 11.1.

1.1.12 **“Common Facilities”**: All those areas located upon each Parcel, excluding the Buildings, but including, without limitation, the following: sidewalks; walkways; aisles and driveways providing ingress and egress to the Buildings and parking areas located within the Shopping Center to and from adjacent public streets and highways; all parking areas; any and all storm water systems including but not limited to retention and detention basins, if applicable; unloading areas (except for Service Facilities which are for the exclusive use of a particular Building or Parcel); plants and other landscaping; the illuminating and mechanical equipment used exclusively in connection with any of the foregoing (but excluding any illumination and mechanical equipment use or operated for a Building); all utility lines and facilities, including but not limited to all sewer lines and water lines, servicing the Parcels to the perimeter walls of any Building in the Shopping Center (but excluding any utility lines and/or facilities which exclusively service only one Parcel and the improvements located thereon); Center Signs; Pad Monument Signs; and all other portions of the Shopping Center designated by the Consenting Owners from time to time as Common Facilities.

1.1.13 **“Common Facilities Budget”**: As defined in **Section 7.1.1**.

1.1.14 **“Common Facilities Charge”**: As defined in **Section 7.4.1.3** and sometimes referred to as a “periodic assessment”.

1.1.15 **“Common Facilities Lien”**: As defined in **Section 11.1**.

1.1.16 **“Common Facilities Maintenance”**: As defined in **Section 6.1**.

1.1.17 **“Common Lighting”**: As defined in **Section 2.4**.

1.1.18 **“Condemnation Award”**: As defined in **Article 14**.

1.1.19 **“Consent of Consenting Owners and Tenant Agents”**: The approval of Consenting Owners and Tenant Agents either owning or occupying seventy-five percent (75%) of the total Floor Area of all Parcels, which shall include the approval of the Owner(s) of the Grocery Store Lot or its Tenant Agent.

1.1.20 **“Consent of Owners”**: The approval of Owners holding two thirds (2/3) or more of the Floor Area.

1.1.21 **“Consenting Owner”**: The following Persons:

1.1.21.1 The Declarant as long as it is the Owner of at least one Parcel.

1.1.21.2 The Owner(s) of Grocery Store Lot, but only during periods that it has not designated a Tenant Agent as provided below.

1.1.21.3 The Owner of one or more Parcels whose aggregate area for the Parcels owned is equal to or greater than three (3) acres, and upon which Parcels there is located Building with an aggregate Floor Area of 30,000 square feet or more, but only during periods that it has not designated a Tenant Agent as provided below.

1.1.21.4 Provided, however, that a Consenting Owner which has entered into a Qualified Lease with a Qualified Lessee, may designate its Qualified Lessee as its agent (herein a **“Tenant Agent”**) for purposes of receiving notices, voting, providing consents and exercising all other rights of such Consenting Owner (as a Consenting Owner or as an Owner) as provided in this Declaration, on behalf of such Consenting Owner by making such designation in writing and providing a copy of the same to the Declarant and remaining Consenting Owners, and during the period of such appointment, the Owner making the appointment shall be suspended as a Consenting Owner. The designation and appointment of a Qualifying Lessee as a Tenant Agent shall remain effective until the expiration of the Qualifying Lease or the termination of such designation as agreed to between the applicable Consenting Owner and its Qualifying Lessee.

1.1.22 **“Contracting Party”**: As defined in **Section 2.6.1.2**.

1.1.23 **“Declarant”**: As defined above, as well as any Owner to whom the Declarant or a successor thereto assigns all of its rights to be the Declarant hereunder.

1.1.24 **“Declarant Control Period”**: As defined in **Section 12.1.2**.

1.1.25 **“Declaration”**: This Declaration of Covenants, Conditions, Restrictions, and Easements for Marketplace at Eagle Mountain Town Center.

1.1.26 **“Default Rate”**: A rate of interest equal to the greater of (i) the Prime Rate plus ten percent (10%) per annum, compounded annually, or (ii) eighteen percent (18%) per annum, compounded annually.

1.1.27 **“Defaulting Party”**: As defined in **Section 11.1**.

1.1.28 **“Deficiencies”**: As defined in **Section 11.2**.

1.1.29 **“Development Agreement”**: That certain Development Agreement of Marketplace at Eagle Mountain Town Center by and between Declarant and City dated January 13, 2021, as the same may be amended.

1.1.30 **“Employee Parking Areas”**: Those areas designated as “Employee Parking Areas” pursuant to the provisions of **Section 5.2**.

1.1.31 **“Entertainment or Recreational Facility”**: As defined in **Section 3.3.1**.

1.1.32 **“Environmental Laws”**: As defined in **Section 13.3.2**.

1.1.33 **“Floor Area”**: With respect to a Parcel within the Shopping Center upon which a Building (excluding Canopy Areas and Service Facilities) has been erected, Floor Area shall mean the total number of square feet of floor space on all levels or stories in a fully constructed Building and approved for occupancy by the City, whether or not actually occupied, excluding basement, subterranean, and balcony space, unless that space is used as selling area. Floor Area shall be measured from the exterior line of the building exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components. With respect to a Parcel within the Shopping Center upon which an office building has been erected, Floor Area shall mean the total number of rentable square feet located in each such office building as determined using the latest BOMA standards. With respect to a Parcel within the Shopping Center which is vacant (i.e., on which no Building has been erected), Floor Area shall mean the Floor Area Ceiling assigned to such Parcel as shown on **Schedule “C”** attached hereto, until such time as a Building is erected upon such Parcel, at which time the Floor Area assigned to such Parcel shall be the Floor Area of the Building as provided for in this Section.

1.1.34 **“Floor Area Ceiling”**: As defined in **Section 2.2.2** and as listed for each Parcel in **Schedule “C”** attached hereto.

1.1.35 **“Hazardous Substance”**: As defined in **Section 13.3.2**.

1.1.36 **“Immediately Adjacent Building”**: A Building that shares a common wall with another Building or a Building whose exterior wall has no material separation from the exterior wall of an adjacent Building.

1.1.37 **“Lienholder”**: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

1.1.38 **“Grocery Store Lot”**: shown and labeled on the Plat as “Lot 2”.

1.1.39 **“Grocery Store Lot Building”**: The Building to be constructed upon the Grocery Store Lot, which is intended to be initially occupied by Grocery Store Owner.

1.1.40 **“Grocery Store Owner”**: The record holder(s) of fee simple title to the Grocery Store Lot, as reflected in the records of the Recorder’s Office.

1.1.41 **“Management Fee”**: As defined in Section 7.4.1.

1.1.42 **“Manager”**: As defined in Section 6.2.

1.1.43 **“Minimum Parking Count”**: As defined in Section 2.3.

1.1.44 **“Non-defaulting Party”**: As defined in Section 11.1.

1.1.45 **“Operating Costs”**: As defined in Section 7.2.

1.1.46 **“Owner”**: The record holder(s) of fee simple title to a Parcel, as reflected in the records of the Recorder’s Office. If there is more than one record title to a Parcel, each record holder shall be an Owner. The term “Owner” includes the Declarant to the extent that the Declarant is the record holder of title to a Parcel. Notwithstanding any applicable theory relating to a mortgage deed of trust, or like instrument, the term “Owner” shall not mean or include a mortgagee or beneficiary or trustee under a deed of trust unless and until such person has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. An Owner who is also a Consenting Owner may designate a Qualified Lessee as its Tenant Agent for purposes of exercising the rights of a Consenting Owner as specified in Section 1.1.21.4 above.

1.1.47 **“Pad(s)”**: “Pad” shall mean any of Pads A through L shown on Schedule “B”, and “Pads” shall mean any two or more thereof where the context requires. These Pads are sometimes also referred to herein as Parcels.

1.1.48 **“Pad Monument Sign”**: Monument signs, to be located on a Pad which are intended to be utilized by Authorized Occupants other than Qualified Lessees (which may be for the benefit of Authorized Occupants of more than one Pad) in locations approved by the City, and during the Declarant Control Period, the Declarant, and thereafter with the Consent of Owners.

1.1.49 **“Parcel(s)”**: In the singular, any of the Lots shown on the Plat, and in the plural, any two or more of such Lots.

1.1.50 **“Person”**: Individuals, partnerships, limited liability companies, firms, associations, corporations, trusts, governmental agencies, administrative tribunals, or any other form of business or legal entity.

1.1.51 **“Plat”**: The Subdivision plat of Marketplace at Eagle Mountain Town Center Subdivision, as recorded in the official records of the Recorder’s Office on [July 19, 2021], as Entry No. [127110:2021], as the same may be amended. Plat shall also mean and include any future plats recorded in the official record of the Recorder’s Office to incorporate future phases of the Marketplace at Eagle Mountain Town Center Subdivision, as the same may be amended.

1.1.52 **“Prime Rate”**: The rate of interest which shall be the rate of interest reported from time to time on the financial page of the Wall Street Journal. Should, for any reason, the Wall Street Journal cease to publish such prime rate, the Prime Rate shall be the prime rate or other reference rate charged from time to time to corporate borrowers of the highest credit standing by Zion’s First National Bank, N.A.

1.1.53 **“Proportionate Share”**: A percentage derived by dividing the total Floor Area of a Parcel by the total Floor Area of all Parcels in the Shopping Center.

1.1.54 **“Qualified Lease”**: A lease entered into with a Consenting Owner, having an initial term of not less than fifteen (15) years and covering space with a Floor Area of 20,000 square feet or more.

1.1.55 **“Qualified Lessee”**: A lessee which has entered into a Qualified Lease with a Consenting Owner, and any successor or assign approved in writing by such Consenting Owner.

1.1.56 **“Real Estate Taxes”**: As defined in Section 9.1.

1.1.57 **“Receipt”**: As defined in Section 15.11.2.

1.1.58 **“Recorder’s Office”**: The Office of the Utah County Recorder, State of Utah.

1.1.59 **“Reimbursement Assessment”**: As defined in Section 12.3.4.

1.1.60 **“Requesting Person”**: As defined in Section 15.9.

1.1.61 **“Restrictions”**: The covenants, conditions, restrictions, easements, liens and encumbrances contained in this Declaration.

1.1.62 **“Seasonal Sales Area”**: As shown on the Site Plan, if any such area is designated, or as designated with the Consent of Consenting Owners and Tenant Agents.

1.1.63 **“Service Facilities”**: Loading docks, trash enclosures, outdoor storage areas, drive-up and drive-through lanes, and other similar service facilities.

1.1.64 **“Shopping Center”**: The Shopping Center Land, together with all Buildings and other improvements located thereon and all appurtenances thereunto pertaining.

1.1.65 **“Shopping Center Land”**: The real property described on Schedule “A”, and consisting of the Parcels.

1.1.66 **“Site Plan”**: The site plan attached hereto as **Schedule “B”** and incorporated herein by this reference, as the same may be amended from time to time in accordance with the provisions of **Section 2.2.3** of this Declaration.

1.1.67 **“Training or Educational Facility”**: As defined in **Section 3.3.1**.

1.1.68 **“Trustee”**: As defined in **Section 11.6**.

1.1.69 **“Utility Facilities”**: As defined in **Section 4.2.1**.

1.1.70 **“Voting Delegate”**: The representative (or such representative’s alternate if she or he is unable to attend a meeting of the Master Association) to the Master Association designated by the Association to cast the votes allocated to Parcels in the Shopping Center on matters requiring a vote of the Owners, as provided in the Master Declaration. The president of the Association shall be the Voting Delegate of the Shopping Center unless a majority of the Board of Directors of the Association shall appoint another representative as the Voting Delegate. The secretary of the Association shall be the alternative Voting Delegate unless a majority of the Board of Directors of the Association shall appoint another representative as the alternative Voting Delegate.

1.2 **Submission**. The Shopping Center Land is hereby submitted to and bound by the Association Governing Documents. All Owners and the Association (if it takes title to any) shall take title subject to the Association Governing Documents. The Association and all Owners, Authorized Occupants, and other Benefitted Parties shall be subject to and bound by the Association Governing Documents.

2. **BUILDING AND COMMON FACILITIES DEVELOPMENT**

2.1 **Standard**. All Buildings and other structures shall be constructed and maintained in accordance with all Applicable Laws and the Development Agreement.

2.2 **Building Location**. The specific placement and dimensions of all Buildings within the Shopping Center (including those resulting from any remodeling, renovation, replacement, or other re-construction) shall be consistent with the requirements of the Development Agreement and subject to the following:

2.2.1 **Grocery Store Lot**: The Grocery Store Lot Building shall be constructed on Grocery Store Lot in all material respects, including size and location, as depicted upon the Site Plan as the same may be amended as provided in **Section 2.2.3** with the consent of Grocery Store Owner.

2.2.2 **Other Parcels**: Buildings constructed on Parcels other than Grocery Store Lot may be constructed in such locations thereon as the then Owner shall request in advance of obtaining City approvals and Declarant shall approve in writing, Declarant’s prior approval not to be unreasonably withheld, delayed or conditioned, provided that such location: (a) does not result in (i) the unreasonable impairment of the visibility of the Shopping Center or the Grocery Store Lot Building, (ii) a material impairment of access between Grocery Store Lot and the public streets known as Eagle Mountain Boulevard and Pony Express Parkway and/or parking in the Shopping

Center (including delivery truck access to the Grocery Store Lot Building), as shown on the Site Plan, (iii) a reduction in the number of parking spaces in the Shopping Center below the Minimum Parking Count, or (iv) any material impairment of the ability of the occupant of the Grocery Store Lot Building to conduct its business as permitted herein; (b) no Building on a Pad shall be situated so that its main entrance faces the Grocery Store Lot Building unless there is at least one row of parking or a landscape buffer between the Grocery Store Lot Building and the Building to be located upon another Pad; and (c) subject to the remainder of this **Section 2.2.2**, the Buildings located on the Pads (excluding Grocery Store Lot) shall not exceed the Floor Area sizes (each a "**Floor Area Ceiling**") set forth on **Schedule "C"** attached hereto:

The Floor Area Ceiling of the Buildings located on each of the Parcels as designated on **Schedule "C"**, may be increased by Declarant by a maximum of ten percent (10%) in order to accommodate the needs of the Owner or prospective tenant(s) thereof, provided that in no event shall the aggregate number of parking spaces in the Shopping Center be reduced below the Minimum Parking Count required hereunder as a result thereof. Nothing herein shall preclude the Declarant or an Owner from combining the Floor Area Ceilings of two or more Parcels for the construction of a single Building or multiple Buildings to be located upon such combined Parcels.

2.2.3 Site Plan Amendment: Provided all Applicable Law approvals are obtained and until the expiration of the Declarant Control Period, the Declarant may alter the Site Plan, including but not limited to a change in location or orientation of a Building, parking stalls, and ingress and egress to and from a Pad, without the approval of the Consenting Owners and Tenant Agents so long as such alteration does not materially and adversely impact the Grocery Store Owner, the Grocery Store Lot or the Grocery Store Lot Building. Thereafter material modifications of the Site Plan shall require the Consent of Consenting Owners and Tenant Agents, together with the approval of applicable governmental agencies as the same may be required.

2.3 Parking. Each Owner of a Parcel located in the Shopping Center shall maintain at all times on each of the Parcels owned by it, a parking ratio equal to or better than shown on the Site Plan which is established as a minimum of four (4) finished, striped parking spaces for each one thousand (1,000) square feet of Floor Area located upon such Parcel, or such greater amount as shall be required by the City as a condition to occupancy of Building upon such Parcel (herein the "**Minimum Parking Count**"). The size and configuration of the parking spaces must satisfy the requirements of the City (which includes a requirement that the parking stalls located on Grocery Store Lot be at least nine (9) feet in width) and must be approved by the Declarant during the Declarant Control Period and thereafter with the Consent of Consenting Owners and Tenant Agents.

2.4 Common Facilities. The Common Facilities are hereby reserved for the use of the Benefitted Parties. The Common Facilities may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, permitted signage, sidewalks, walkways, landscaping, perimeter walls and fences, lighting for Common Facilities (herein "**Common Lighting**"), utilities, and Service Facilities designated for common use, if any, and for no other purpose unless otherwise specifically provided in this Declaration. The Common Facilities shall be constructed in accordance with the material provisions of the Site Plan and shall be kept and maintained as provided for herein. The sizes and arrangements of the Common Facilities improvements, including, without limitation, service drives and parking areas, striping,

traffic directional arrows and signs, concrete bumpers, Common Lighting, perimeter walls and fences, and landscaped areas together with necessary planting may not be materially changed after initial construction as approved by the Declarant without the prior written Consent of Consenting Owners and Tenant Agents.

2.5 Type and Design of Building.

2.5.1 Quality and Compatibility. Each Building to be constructed in the Shopping Center shall be constructed to accommodate Permitted Uses as specified in **Article 3**, and shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other Buildings located in the Shopping Center as reasonably determined by Declarant during the Declarant Control Period and thereafter by the Consenting Owners and Tenant Agents, subject to the following:

2.5.1.1 Subsequent to the Declarant Control Period, no Building may be constructed nor the exterior of any existing Building changed in any way (including, without limitation, signs and color) without the prior, written Consent of Consenting Owners and Tenant Agents as to the exterior elevations (including, without limitation, signs and color) of the Building to be constructed or modified, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing: (a) the standard signs and logos of the occupant of the Grocery Store Lot Building, any other Qualified Lessee, or a national franchise or business, as such logos and signs may exist from time to time, shall not require approval; (b) the opening, closing or relocation of any door shall not require approval; (c) after the initial Grocery Store Lot Building is constructed, subsequent changes to the Grocery Store Lot Building shall require the Consent of Consenting Owners and Tenant Agents; provided, however, that if the color and/or elevations of any Immediately Adjacent Building to the Grocery Store Lot Building, or of an Immediately Adjacent Building to the foregoing Immediately Adjacent Building, have been patterned after or integrated with the Grocery Store Lot Building, then the Consenting Owner or its Tenant Agent of Grocery Store Lot shall reasonably consult and cooperate with the Owners of the Immediately Adjacent Building(s) before making changes that would be inconsistent with such patterning and integration; and (d) subject to all other restrictions contained herein and except as otherwise required herein, the standard building elevations of national businesses located on Parcels shall not require the Consent of Consenting Owners and Tenant Agents.

2.5.1.2 Subsequent to the Declarant Control Period, before construction is commenced of any proposed Building or any modification of an existing Building which requires approval as specified in **Section 2.5.1.1**, sufficient information shall be sent to the Consenting Owners, and Tenant Agents to enable them to make a reasonable determination as to the architectural and aesthetic compatibility of said Building or modification with all other Buildings in the Shopping Center. No Consenting Owner or Tenant Agent may arbitrarily or unreasonably withhold its approval of the proposed Building or modification if it is architecturally and aesthetically compatible and harmonious with all other Buildings in the Shopping Center and otherwise complies with the requirements of this Declaration. Each Consenting Owner and Tenant Agent must approve or disapprove a proposal submitted to it within thirty (30) days after the receipt of the proposal, and, if such Consenting Owner or Tenant Agent disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If a Consenting

Owner or Tenant Agent (even though it rejects or disapproves the proposal) fails to provide such explanation within the thirty (30) day period, such Consenting Owner or Tenant Agent shall be deemed to have approved the proposal provided that with the submission of such approval, the party seeking the approval has stated in writing to the Consenting Owner or Tenant Agent whose approval is sought, that if a disapproval with supportive explanation is not delivered to the party seeking the approval within the thirty (30) day period after receipt of the proposal, approval shall then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternative proposal may be submitted, which alternative proposal shall be submitted and considered in the same manner and according to the same procedures as the initial proposal. No approval or deemed approval of the architectural and aesthetic compatibility of any Building or modification of a Building shall waive any requirement that all Buildings be built of first quality construction or any other requirement applicable under this Declaration. If a dispute arises regarding whether a Building or modification to a Building is architecturally and/or aesthetically compatible and harmonious with other Buildings in the Shopping Center, the disputing parties shall attempt to resolve the dispute informally and in an amicable manner. If the disputing parties cannot resolve the dispute among themselves, they shall submit their dispute to a mutually approved and qualified architect, whose decision shall be binding, and who shall have no liability to the disputing parties, other Owners, or any other person for the architect's decision. If the dispute still remains unresolved, the parties shall submit the dispute to arbitration as provided in **Section 15.4** herein.

2.5.2 Sprinkler Systems. Every Building either shall be equipped with automatic sprinkler systems or similar systems which meet or exceed applicable building codes and do not adversely affect the fire rating (for insurance purposes) of any Building built upon any adjacent Parcel.

2.5.3 Structural Integrity. No Building shall be built in a manner that shall adversely affect the structural integrity of any other Building in the Shopping Center.

2.5.4 Height. All Buildings in the Shopping Center located on Pads A through L which have frontage on Pony Express Parkway or Eagle Mountain Boulevard shall be single story and not exceed twenty-six (26) feet in height, (subject to Applicable Laws). All other Buildings in the Shopping Center, except the Grocery Store Lot Building or Immediately Adjacent Buildings to the Grocery Store Lot Building, shall not exceed fifty feet (50') in height (subject to Applicable Laws), including the height of mechanical fixtures and equipment and screening of the same, excluding incidental architectural embellishments and peaks, measured from the finished grade at the center point of the front side of the Buildings (i.e., the side of the Building facing the customer parking lot, or if more than one customer parking lot abuts the Building, the side of the Building containing the main entrance). The Grocery Store Lot Building shall not exceed one (1) story above finished grade and thirty-eight feet (38') in height, including the height of mechanical fixtures and equipment and screening of the same, measured from the finished grade at the center point at the front side of the Buildings (i.e., the side of the Building facing the customer parking lot); provided, however, the Grocery Store Lot Building may have some mezzanine or second level finished space in it for use as administrative offices or storage for the first level use. Immediately Adjacent Buildings to the Grocery Store Lot Building may equal, but not exceed, the same height as the Grocery Store Lot Building. Any variance from the restrictions set forth above shall require the prior written approval of the Declarant during the Declarant Control Period and thereafter the

Consent of Consenting Owners and Tenant Agents, but in no event shall such variance materially and adversely impact the Grocery Store Owner, the Grocery Store Lot or the Grocery Store Lot Building.

2.5.5 Basements and Mezzanine Restrictions. No mezzanine or basement area constructed as part of a building shall be used for the sale or display of merchandise unless the same is first approved in writing by the Declarant during the Declarant Control Period and thereafter the Consent of Consenting Owners and Tenant Agents.

2.5.6 Building Maintenance. Each Owner shall maintain or cause to be maintained the exterior and interior of any Building, including any Canopy Areas and Service Facilities (unless designated as part of the Common Facilities) located on such Owner's Parcel(s) including but not limited to painting, repair, replacement, and care of roofs, gutters, downspouts, exterior building surfaces and the maintenance of all mechanical equipment and devices, including but not limited to appurtenant electrical, plumbing, and heating, ventilating and air conditioning systems. Such maintenance shall be of a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the parking areas in a manner initially approved by the Declarant or, after the Declarant Control Period, approved with the Consent of Consenting Owners and Tenant Agents.

2.6 Construction Requirements.

2.6.1 Timing and Manner of Work. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Building, sign or Common Facilities improvements located in the Shopping Center shall be effectuated as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, and any public right-of-way, (ii) customer vehicular parking designated in that portion of the improved Common Facilities located in front of any Building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. All Common Facilities shown on the Site Plan for a Parcel shall be constructed and installed in advance of or in connection with the construction of the Building(s) on the Parcel. In addition:

2.6.1.1 Staging for the construction, replacement, alteration or expansion of any Building, sign or Common Facilities improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Declarant during the Declarant Control Period and thereafter with the Consent of Consenting Owners and Tenant Agents; however, to the extent possible, the staging area must be self-contained on the Parcel where construction activity is to occur.

2.6.1.2 Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause promptly to be repaired and restored to its prior

condition all Buildings, signs and Common Facilities improvements damaged or destroyed in the performance of such work.

2.6.2 Liens. The Contracting Party shall not permit any liens to remain effective against any Parcel for any work done or materials furnished in connection with the performance of the work described in **Section 2.6.1** above; subject to the following:

2.6.2.1 The Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

2.6.2.2 The Contracting Party shall, within thirty (30) days after receipt of written notice from an Owner or Authorized Occupant, cause any such outstanding lien or claim of lien to be released of record or transferred to a bond in accordance with Applicable Laws, in a manner reasonably satisfactory to the Person giving notice, failing which such Owner or Authorized Occupant shall have the right, at the Contracting Party's expense, to transfer said lien to a bond.

2.6.2.3 The Contracting Party shall indemnify, defend and hold harmless the Owners and Authorized Occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorneys' fees incurred in or before any action, at trial, on appeal or in bankruptcy court), liens, claims of liens, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the otherwise indemnified Person, its tenants, subtenants, agents, contractors or employees.

2.6.3 Incidental Encroachments. The Owners acknowledge and agree that incidental encroachments upon the Common Facilities and Buildings may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and Common Facilities improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Facilities or with the normal operation of any business in the Shopping Center.

2.6.4 Insurance. During the course of any construction or repair as to any Building on a Parcel, the Person responsible for such construction or repair shall obtain and maintain:

2.6.4.1 Commercial general liability insurance (as to which the all Owners and Authorized Occupants shall be additional insureds) on an "occurrence basis" against claims for bodily injury, personal injury, death or property damage occurring on, in or about the Shopping Center and the adjoining streets, sidewalks and passageways, with such insurance to be in single limit coverage in the minimum amount of Three Million Dollars (\$3,000,000.00);

2.6.4.2 Workers' compensation insurance for all employees of the entity conducting such construction who are engaged in such construction, in the amounts established by law; and

2.6.4.3 “Builder’s completed value all risk” insurance against “all risks of physical loss” including collapse and transit coverage, during construction or repair, with deductibles not to exceed Five Thousand Dollars (\$5,000.00), covering the Building under construction while in the course of construction, fixtures, machinery, construction equipment, and building materials and supplies with limits covering the cost of such building, materials and supplies.

2.6.5 Condition Pending Construction. Except as provided in **Section 6.1.12** below, each Owner of any Parcel in the Shopping Center, at its expense, shall maintain the undeveloped portion thereof in a clean condition, free from weeds, and either landscaped and/or covered with gravel base prior to commencement of construction of Buildings; provided, however, that on or before the date which will be three (3) years after the date that the Grocery Store Lot Building first opens for business, each Owner, at its expense, shall either: (i) install an asphalt cap on such unimproved Parcel according to the requirements of Applicable Law; (ii) install landscaping and a sprinkling system on such unimproved Parcel; or (iii) commence or cause to be commenced construction of one or more Buildings upon such Parcel and thereafter diligently pursue such construction to completion. Except as provided in **Section 6.1.12** below, each owner of any unimproved Parcel shall maintain its Parcel in a clean condition, free from weeds, pending construction of and Building thereon and shall use reasonable efforts to minimize the creation and distribution of dust that may detrimentally affect the Shopping Center.

2.7 Casualty and Condemnation. In the event all or any portion of any Building located within the Shopping Center is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such Building shall promptly restore or cause to be restored the remaining portion of such Building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such Building together with all rubble and debris related thereto. All portions of Parcels on which a restoration or replacement of a Building has not commenced within ninety (90) days following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining Shopping Center Land and in such a manner as to not adversely affect the drainage of the Shopping Center or any portion thereof, and shall be covered by a one inch asphalt dust cap or a compacted gravel base or landscaped (including a sprinkling system). In the event any Common Facilities are damaged or destroyed by fire or other casualty or taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, any insurance or condemnation proceeds or awards and any needed additional funds of the Owner shall be used by the Owner to restore the remaining portion of the Common Facilities so that they are in operative condition.

3. PERMITTED USES AND RESTRICTIONS ON USE

3.1 Permitted Uses. Permitted uses of any portion of the Shopping Center and any Floor Space located therein, shall be limited to those uses permitted by the terms and conditions of the Development Agreement or as otherwise permitted by Applicable Laws of the City.

3.2 Exclusive Uses.

3.2.1 Grocery Store Exclusive Use:

3.2.1.1 As long as the Grocery Store Lot Building is occupied and operated as a grocery store by Grocery Store Owner or another Qualified Lessee, and for a period of twelve (12) months after the termination of such occupancy or during the first and only continuous twelve (12) month period of no operations as a grocery store, to the extent lawful, there shall not be operated in the Shopping Center, and no part of the Shopping Center except the Grocery Store Lot Building, shall be used for (i) a grocery store, supermarket or convenience store (except one convenience store containing not more than five thousand (5,000) square feet, plus the square footage of any in-store fast food service such as but not limited to Burger King or McDonalds), that sells or offers for sale a combination of the following products: vegetables, fruits, and produce; meat products; deli and delicatessen products; milk, cheese, packaged or container ice cream, and other dairy products; canned and packaged unprepared food for off-premises consumption; soaps and detergents; (ii) a bakery or pastry shop (except that specialty donut bakeries such as but not limited to Tommies, Dunkin' Donuts, and Krispy Kreme are allowed); or (iii) a delicatessen (except that sandwich-type shops such as but not limited to Blimpies, Subway and Quizno's are allowed). Furthermore, no space in the Shopping Center shall be leased by or sold to WalMart or any subsidiary or affiliate thereof for use as a WalMart store, a Super WalMart store, a Neighborhood Market store, or a Sam's Club store; and no space in the Shopping Center shall be leased or sold for use as a super center or club store, including without limitation a Super Target store (although a regular Target Store shall be permitted) or a Costco so long as the Grocery Store Lot Building is occupied and operated as a grocery store by Grocery Store Owner or another Qualified Lessee. A so-called "dollar store" shall also be permitted.

3.2.1.2 As long as a portion of the Grocery Store Lot Building is occupied and operated as hardware store by Grocery Store Owner or another Qualified Lessee, and for a period of twelve (12) months after the termination of such occupancy or during the first and only continuous twelve (12) month period of no operations as a hardware store, to the extent lawful, there shall not be operated in the Shopping Center, and no part of the Shopping Center except the Grocery Store Lot Building, shall be used for a hardware store.

3.2.1.3 As long as a portion of the Grocery Store Lot Building is occupied and operated as a drugstore/pharmacy by Grocery Store Owner or another Qualified Lessee, and for a period of twelve (12) months after the termination of such occupancy or during the first and only continuous twelve (12) month period of no operations as a drugstore/pharmacy, to the extent lawful, there shall not be operated in the Shopping Center, and no part of the Shopping Center except the Grocery Store Lot Building, shall be used for a pharmacy that sells drugs or other products which are required by law to be dispensed by a registered pharmacist.

3.2.1.4 The provisions in **Sections 3.2.1., 3.2.2, & 3.2.3** shall not apply to the sale of restricted items where the sale of such items is incidental to and does not constitute more than twenty percent (20%) of the business of the seller.

3.2.1.5 Such limitations and exclusive rights granted to Grocery Store Owner or a Qualified Lessee as specified in this **Section 3.2** while it is a tenant of the Shopping Center shall apply to the entire Shopping Center, as originally constructed or developed, and all additions or phases thereto and all expansions thereof.

3.2.1.6 Nothing herein shall be deemed to require Grocery Store Owner to operate a store or business on Grocery Store Lot under any particular trade name.

3.2.2 Credit Union Exclusive:

3.2.2.1 No portion of the Shopping Center shall be occupied or used directly or indirectly for a credit union so long as the Credit Union Owner is operating a credit union upon Lot 5 in the Shopping Center. “**Credit Union Owner**” shall mean the record holder(s) of fee simple title to Lot 5 in the Shopping Center as reflected in the records of the Recorder’s Office (the “**Credit Union Exclusive**”). The Credit Union Exclusive shall not apply to the interior of the Grocery Store Building.

3.3 **Prohibited Uses.** None of the following uses shall be allowed within three hundred feet (300’) of the main entrance of the Grocery Store Lot Building, unless such uses in each individual instance are less than three thousand five hundred (3,500) square feet in interior floor space: sit down type restaurant (with waiter/waitress service as distinguished from the traditional fast food restaurants which promote fast service and take out dining, such as but not limited to McDonald’s, Burger King and Wendy’s); automotive maintenance or repair facility (unless operated by a national company or franchisee thereof); or coin operated car wash. No part of the Shopping Center shall be used as: a bar, tavern, saloon, or cocktail lounge (except as an incidental use associated with a restaurant, so long as liquor sales do not exceed thirty-five percent (35%) of gross revenues in any one month); sexually-oriented or pornographic business or sales; flea market; warehouse (except as incidental to an otherwise permitted use); payday lending facility or pawn shop; smoke shop; auctioneering enterprise; head shop; funeral home; halfway house, addiction, rehabilitation center, detention center or homeless shelter; distilling, refining smelting, agricultural, animal raising or boarding (other than consumer pet shops) or mining operations; any short or long-term residential use; any primary use as a warehousing assembling, manufacturing, waste processing or other industrial operation; any business or facility whose primary use or primary business purpose includes growing, delivering, transferring, supplying, dispensing, disbursing, distributing, or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings, or processed or harvested portions of the marijuana plant; Entertainment or Recreational Facility or Training or Educational Facility; for the renting, leasing or selling of, or displaying for the purpose of renting, leasing or selling of, any boat, motor vehicle or trailer (except where incidental to a permitted business); or a warehouse or industrial purposes; subject to the following terms and conditions:

3.3.1 **Meanings of Certain Facilities.** For the purposes of this Section 3.3.1, (i) the phrase “**Entertainment or Recreational Facility**” shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, exercise facility, fitness center (except that gyms, health spas or studios, exercise facilities, and fitness centers of less than five thousand (5,000) square feet shall *not* be prohibited), nightclub or dance hall, billiard or pool hall, massage parlor (except as part of a permitted spa), amusement arcade, game parlor or video arcade, which shall be defined as any store containing more than four (4) coin or token operated electronic games or electronic games for hire and use on the premises, or other similar activities; and (ii) the phrase “**Training or Educational Facility**” shall include, without limitation, a beauty school, barber college, reading room, computer store providing training on the premises except for a computer store which provides training and education in connection with the retail sale of computers and

computer equipment and software to groups of not more than ten (10) persons at one time, place of instruction or any other operation catering primarily to students or trainees as opposed to customers, or similar activities.

3.4 Enforcement. If the provisions of this Article shall be breached or shall be threatened to be breached, the Association, any Owner, or Authorized Occupant shall be entitled to injunctive relief or any other appropriate remedy at law or in equity whether provided by statute or otherwise, as such elect.

4. EASEMENTS

4.1 Ingress, Egress and Parking. Each Owner, as grantor, hereby reserves to itself and grants to each other Owner, for the benefit of the Benefitted Parties and each Parcel, a non-exclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Facilities located on each Owner's Parcel(s), except for those areas devoted to Service Facilities and not designated as part of the Common Facilities reserved for the use of all Authorized Occupants. The rights of ingress, egress and parking set forth in this Section shall apply to the Common Facilities for each Parcel.

4.2 Utility Lines and Facilities.

4.2.1 Grant. Each Owner, as grantor, hereby reserves to itself and grants to each other Owner, for the benefit of the Benefitted Parties and each Parcel, as grantees, a non-exclusive easement under, through and across the portion of the Common Facilities located on each Owner's Parcel(s) which are not usable for building locations under Applicable Laws of the City for the installation, operation, maintenance, repair and replacement of storm water drainage systems or structures, water mains, storm and sanitary sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities (the improvements, structures, mains, pipes, lines, conduits and components collectively referred to as the "Utility Facilities"). In connection therewith:

4.2.1.1 All Utility Facilities shall be installed and maintained below ground level or surface of such easements except for ground-mounted electrical transformers and such other components as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Shopping Center).

4.2.1.2 The installation, operation, maintenance, repair and replacement of such Utility Facilities shall not unreasonably interfere with the use of the improved Common Facilities or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use, and shall provide as-built plans for all such Utility Facilities to the Association and the Owner of all Parcels upon which such Utility Facilities are located, within thirty (30) days after the date of completion of construction of the same.

4.2.2 Relocation. At any time and from time to time, the Owner or Tenant Agent of a Parcel shall have the right to relocate on its Parcel any Utility Facilities installed pursuant to

the foregoing grant of easement which is then located upon the Parcel of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's or Tenant Agent 's intention to undertake the relocation shall have been given to the Owner and to the Association and, if applicable, the Tenant Agent, of each Parcel served by the Utility Facilities to be relocated, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels serviced by the Utility Facilities, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Facilities, (iv) shall be performed without cost or expense to the Owner, the Association, Tenant Agent, or Authorized Occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner or Tenant Agent performing such relocation shall provide as-built plans for all such relocated Utility Facilities to the Association and the Owners of all Parcels served by all such Utility Facilities within thirty (30) days after the date of completion of such relocation.

4.2.3 Additional Grants. Each Owner agrees to grant such additional easements as are reasonably required by the Association or any public or private utility for the purpose of providing utility services and installing Utility Facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration, and provided that such easements do not unreasonably interfere with or limit the use of the subject Parcels.

4.3 Signs. Each Owner, as grantor, hereby grants to the other Owners and to the Association, as grantees, for the benefit of each Parcel belonging to the other Owners and the Authorized Occupants of a Building located upon each such Parcel, an easement under, through and across the Common Facilities of each Owner's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs, and all utility lines and facilities appurtenant thereto, referred to in **Section 5.3** of this Declaration (provided that the Center Signs located on Grocery Store Lot shall only advertise the business conducted within the Grocery Store Lot Building. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use and shall provide as-built plans for all such facilities to the Association and Owners of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of the same.

4.4 Building Encroachments. Each Owner, as grantor, hereby grants to the other Owners, as grantees, for the benefit of each Parcel belonging to the other Owners and its Authorized Occupants, as applicable, an easement for any portion or component of any Building Improvement located on any such Parcel which may unintentionally encroach into or over the adjoining Parcel(s) by not more than six (6) inches. The easements granted in this Section shall survive the termination of this Declaration and shall last so long as the encroaching Building is standing following its initial construction or following its reconstruction where such Building is substantially restored to its prior condition following a casualty or condemnation.

5. OPERATION OF COMMON FACILITIES

5.1 Parking.

5.1.1 Charges. There shall be no charge for parking in the Common Facilities without the prior written Consent of Declarant during the Declarant Control Period and thereafter Consenting Owners and Tenant Agents, or unless otherwise required by law.

5.1.2 Parking Spaces. Each Parcel located within the Shopping Center shall at all times contain the Minimum Parking Count; provided, however, that the Minimum Parking Count shall not be required during a reasonable time required to maintain or repair parking spaces on a Parcel.

5.2 Employee Parking. The employees, contractors, agents, officers and partners of all Owners and Authorized Occupants of the Shopping Center shall use only the Employee Parking Areas for parking as shall be designated as such by the Owners from time to time, provided that only employees employed within the Grocery Store Lot Building may park in the Employee Parking Areas located within Grocery Store Lot. Consenting Owners and Tenant Agents may from time to time designate, expand and/or relocate the Employee Parking Areas in the Shopping Center by written notice to all Owners and Authorized Occupants within the Shopping Center. The authority herein granted shall be exercised in such manner as not to discriminate against or create any unreasonable burden upon any Owner or Authorized Occupant of the Shopping Center.

5.3 Signs.

5.3.1 Location, Design, Content, and Costs. Subject to compliance with Applicable Law, the terms of the Development Agreement, and the approval of the Declarant during the Declarant Control Period and thereafter the Consent of Consenting Owners and Tenant Agents with respect to location, size and design, which consent shall not be unreasonably withheld, conditioned or delayed: (i) Center Signs shall be erected and maintained in the Shopping Center for the benefit of Owners or their Qualified Lessees and placed in the locations shown on **Schedule "D"** attached hereto and incorporated herein by reference (the "**Shopping Center Signs Plan**"); and (ii) Pad Monument Signs for the benefit of Authorized Occupants excluding Qualified Lessees, may be placed on each of the Pads, subject to the following terms and conditions:

5.3.1.1 The cost of designing, constructing, maintaining, repairing, replacing, and using the Center Signs (excluding electrical hookup to the Common Facilities meter) shall be paid by the Owners or their Qualified Lessees entitled to display designations (other than the Shopping Center designation) thereon in accordance with the proportionate sign panel size relative to the other sign panels located on such Center Sign. The cost of constructing, maintaining, repairing and replacing the Pad Monument Signs shall be paid by the Owner of the Pad on which the sign is located or if a Pad Monument Sign is utilized by the Owners of more than one Pad, then by the Owners of such Pads in accordance with the proportionate sign panel size relative to the other sign panels located on such Pad Monument Sign; provided, however, that nothing contained herein shall prevent the Owner of a Pad from shifting such expense to the Authorized Occupants of the Pad.

5.3.1.2 Each Person displaying a designation on the Center Signs shall supply and maintain its own sign fascia and can. The design of the Center Sign structure(s) shall be consistent with the fascia used and selected by the Consenting Owners and Tenant Agents;

provided, however, that the Grocery Store Owner of the Grocery Store Lot Building may use such standard fascia as they from time to time use generally in carrying on their businesses.

5.3.1.3 The Grocery Store Owner of the Grocery Store Lot shall be entitled to fifty (50%) percent of the sign panel placement on the Center Signs (exclusive of the Shopping Center designation) at the top of the sign just below the Shopping Center designation. The Center Signs shall be maintained in a first class shopping center standard in the area of the Shopping Center.

5.3.1.4 Each Pad Monument Sign may advertise only the business of the Authorized Occupants located upon such Pad or Pads for which Pad Monument Sign was installed. For each Pad Monument Sign utilized by the Grocery Store Owner of the Grocery Store Lot with another Owner, the Grocery Store Owner of the Grocery Store Lot shall be entitled to the top and largest sign panel placement. Pad Monument Signs may not be higher than six (6) feet above the finished landscape of the immediately surrounding area and may not be longer than twenty (20) feet.

5.3.2 **Restrictions and Types.** Other than as set forth in this Section 5.3, there shall be no other signs, except directional signs and signs on Buildings, in the Shopping Center. All exterior Building signs on all Buildings in the Shopping Center shall be restricted to identification of the business or service/product located or provided therein. No exterior Building sign shall be placed on penthouse walls, extend above the Building silhouette line or be painted on the exterior Building surface, without the approval of the Declarant during the Declarant Control Period and thereafter without the Consent of Consenting Owners and Tenant Agents. No exterior Building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances, or LED signs and displays with scrolling messages and changing images, unless approved in writing by the Consenting Owners and Tenant Agents.

5.4 **Protection of Common Facilities.** Each Owner and Authorized Occupant shall have the right to take such reasonable steps as it deems necessary to prevent those Persons not authorized by this Declaration or other easements or similar rights of record in the Recorder's Office from using the Common Facilities for ingress, egress and parking, provided such steps do not deprive any Owner or Authorized Occupant of the substantial benefit and enjoyment of the Shopping Center and further provided that each Owner and Authorized Occupant shall be given thirty (30) days' prior written notice of such steps.

5.5 **Exterior Sales.** No portion of the Common Facilities may be used by an Authorized Occupant of a Parcel for the display and/or sale of merchandise and services, except as follows:

5.5.1 **Sidewalks.** An Authorized Occupant of Grocery Store Lot may use the sidewalks directly in front of the Grocery Store Lot Building for the sale of merchandise and services, provided that all such merchandise and services exhibited for sale (and the sidewalk, during periods in which such merchandise or services are being displayed) must be kept in a safe, neat, clean and attractive manner, including sweeping and removal of snow, ice or other debris, and a reasonable pedestrian passage corridor must at all times be maintained through such area.

5.5.2 Seasonal Sales Area. An Authorized Occupant of Grocery Store Lot shall be permitted to use the Seasonal Sales Area approved for Grocery Store Lot for seasonal sales of merchandise from time to time, but not continuously, provided that (i) such sales shall be permitted by Applicable Laws and shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, to or from any public right-of-way; (ii) such Authorized Occupant maintains the Seasonal Sales Area in a safe, neat and clean condition including sweeping and removal of snow, ice or other debris, to the extent such maintenance is required during periods in which such Authorized Occupant is making use of the Seasonal Sales Area or to the extent such use by the Authorized Occupant prohibits the Association from fulfilling Common Facilities Maintenance; (iii) sales within the Seasonal Sales Area shall be limited to not more than one hundred twenty (120) days duration in each calendar year; (iv) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the Authorized Occupant of Grocery Store Lot upon termination of said sales activities; and (v) the Common Facilities shall be promptly repaired to their condition immediately prior to their use for seasonal sales at the sole cost and expense of the Authorized Occupant of Grocery Store Lot.

5.5.3 Obligation for Compliance. For purposes of this **Section 5.5**, the Grocery Store Owner of the Grocery Store Lot shall remain responsible and liable to see that any external sales conducted pursuant to this **Section 5.5** comply with the requirements set forth herein.

5.6 Common Lighting. Common Lighting shall be provided during those dawn, dusk and nighttime hours that fall between one-half hour before and one-half hour after the hours of standard operation of the Shopping Center ("**Common Lighting Hours**"). During all other dawn, dusk and nighttime hours, the Common Lighting may be reduced to three (3) foot candles. However, Common Lighting need not be maintained in the event of failure of power, restrictive governmental law or regulations, riots, insurrection, war, act of God, or other reason of a like nature not the fault of the party responsible for Common Lighting, in which instance performance of the foregoing covenant shall be excused. Notwithstanding the foregoing, the Owner of any Parcel may require the Association to light the Common Facilities on its Parcel (and other Common Facilities on adjacent Parcels which may not be operated separately from those on the Parcel of the requesting Owner) beyond Common Lighting Hours, provided such Owner shall pay the cost thereof, as reasonably determined by the Association; provided that, in the alternative, such Owner may, at its sole option and cost, cause the Common Lighting on its Parcel to be separately metered and billed to the Owner or Authorized Occupant of such Parcel.

5.7 Flag. The Grocery Store Owner of the Grocery Store Lot Building shall have the exclusive right in the Shopping Center, subject to compliance with all Applicable Laws, to erect and maintain, at its sole expense, a permanent, exterior flagpole on Grocery Store Lot as shown on the Site Plan, or approved by Declarant, and, without limitation, to display the American flag thereon as it deems appropriate. Nothing herein shall preclude any other Owner or Authorized Occupant from displaying the American Flag in any other manner other than a permanent exterior flagpole.

6. MAINTENANCE AND REPAIR OF COMMON FACILITIES.

6.1 Operation of the Common Facilities. The Common Facilities shall be operated and maintained in compliance with all Applicable Laws, the provisions of this Declaration and the Development Agreement, and in a safe, sound and clean condition, free of rubbish, debris, or other hazards to Persons using the same. Except as set forth herein, the Association shall be responsible to operate and maintain all Common Facilities improvements and to repair and replace the same with materials at least equal to the original quality of the materials being repaired or replaced, so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. This operation, maintenance and repair (i) shall be performed and carried out promptly by the Association (through its Manager if one is retained), or contractors retained for such purposes and in a first class and workmanlike manner, quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center and in an equitable and non-discriminatory manner among the various Parcels; (ii) shall be referred to herein as the “**Common Facilities Maintenance**”; and (iii) shall include but not be limited to the following:

6.1.1 Drive and Parking Areas. Maintaining, repairing, cleaning and replacing all blacktop, paved surfaces and curbs in a smooth and evenly covered condition, and such work shall include, without limitation, sweeping, restriping, resealing and resurfacing. (For the purpose of this Section, an overlay of the drive and parking areas shall be considered a maintenance item.)

6.1.2 Debris, Refuse and Trash Removal. Periodic removal of all litter, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Facilities in a first-class, clean and orderly condition. All sweeping shall be done at appropriate intervals during such times as shall not unreasonably interfere with the conduct of business or use of the Common Facilities by Persons intending to conduct business with Authorized Occupants of the Shopping Center. The Grocery Store Owner of the Grocery Store Lot, shall be responsible for removal of the trash generated from the use of Grocery Store Lot at its/their own expense, and shall do so in such manner as shall keep Grocery Store Lot and the Grocery Store Lot Building in a first-class, clean and orderly condition. All other Shopping Center Trash Removal shall be part of the Common Facilities Maintenance, shall be performed in such manner as shall keep the rest of the Shopping Center and the Buildings located therein in a first-class, clean and orderly condition, and shall be charged as a Common Area Cost to all of the Parcels except Grocery Store Lot.

6.1.3 Signs and Markers. Placing, cleaning, keeping in repair, replacing, and repainting any appropriate directional signs or markers, including any handicapped parking signs, and also the Center Signs, except as otherwise provided in this Declaration with regard to sign fascia and cans which shall be supplied and maintained by the businesses designated thereon. The Owner(s) of each Pad shall pay the cost of so maintaining the Pad Monument Signs located on or used for the benefit of the Owner’s Pad.

6.1.4 Common Lighting. Maintaining, cleaning and replacing Common Lighting facilities, including lamps, ballasts and lenses.

6.1.5 Landscaped Areas. Maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of Buildings, in an attractive and thriving condition, and replacing shrubs and other landscaping as necessary; provided, however, that if any

Authorized Occupant requires “special” landscaping (i.e., beyond the type of landscaping originally installed as part of the Common Facilities on Grocery Store Lot), the cost of installation, replacement and maintenance of such special landscaping shall be borne solely by such Authorized Occupant and shall not be included in Operating Costs.

6.1.6 Common Utilities. Maintaining, cleaning, replacing, and repairing any and all common utility lines, including any sprinkling systems and Common Facilities water lines; and payment of all electrical, water and other utility charges or fees for service furnished to such Common Facilities, including lighting for the Center Signs and Common Lighting.

6.1.7 Obstructions. Keeping the Common Facilities free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

6.1.8 Sidewalks. Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center, to the extent the same is not performed as otherwise provided hereunder. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Facilities.

6.1.9 Traffic. Regulation of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow. Notwithstanding anything to the contrary, each Owner in the first instance and each Authorized Occupant, if required by written agreement with the Owner, shall maintain and repair, at its sole cost, in a clean, slightly and safe condition any Service Area intended to service a Building located upon such Owner’s Parcel.

6.1.10 Insurance. Obtaining and paying premiums for insurance coverage on the Common Facilities as provided in **Section 7.5**.

6.1.11 Walls. Maintaining, repairing and replacing, when necessary, all Common Facilities walls, fences, or barricades.

6.1.12 Undeveloped Parcel Maintenance. At its expense, each Owner of an undeveloped Parcel shall maintain its Parcel in accordance with the provisions of **Section 2.6.5** and the Association shall have no obligation to maintain the same; provided, however, that if an asphalt cap or landscaping is installed thereon pursuant to **Section 2.6.5**, then thereafter the Association shall perform Common Facilities Maintenance thereon suspended for periods of construction of a Building and related improvements.

6.2 Manager. Any Person retained by the Association and charged with the obligation for the operation and maintenance of the Common Facilities or some portion thereof from time to time, as an agent of the Association, shall be referred to herein as the “**Manager**”. The Manager shall be an independent contractor and not an agent or employee of the Association. The Manager shall have such administrative functions and powers as shall be delegated to the Manager by the Association and shall be subject to the direction of the Board of Directors of the Association and to the direction of the Master Association as provided in the Master Declaration. The Manager shall be selected and operate according to the following terms and conditions:

6.2.1 Agreement with Manager. The Association shall at all times engage a qualified Manager to manage the operations of the Association and to manager the Common Facilities. Engagement of the Manager shall be pursuant to a written agreement.

6.2.2 Replacement by Consenting Owner Action. During the Declarant Control Period, the Board of Directors of the Association shall have the right to engage and replace the Manager. After the Declarant Control Period, the Association, with the Consent of Consenting Owners and Tenant Agents, shall have the right to engage and replace the Manager. All agreements between the Association and the Manager shall provide that the Manager may be terminated for cause or upon such other terms as the parties shall agree.

6.2.3 Cure of Manager's Default. Notwithstanding any other provision of this **Section 6.2**, and in the absence of notice and cure provisions within an agreement between the Association and the Manager, the Grocery Store Owner of the Grocery Store Lot, at its option and in its sole discretion, may require that the Association give the Manager notice of termination for cause resulting from (a) the Manager's failure to do or cause to be done the Common Facilities Maintenance promptly and in a first-class and workmanlike manner, or (b) the Manager's failure to perform any other obligation under the terms of its agreement. Unless a cure period is required by the terms and conditions of the agreement between the Association and the Manager, the Association, with the approval of the Grocery Store Owner of Grocery Store Lot (which approval is required only for maintenance issues), may provide the Manager with a period of ten (10) days after the date of the written notice in which to cure such default (or, if such default is not reasonably capable of cure within a ten (10) day period, then within a reasonable period of time provided the Manager gives notice of its intent to cure and thereafter diligently pursues such cure to completion). In the event of continued failure to maintain Common Facilities and if the Association is not able to obtain services from others necessary to resolve any emergency maintenance item, if the Grocery Store Owner of Grocery Store Lot is required to perform any emergency maintenance after first notifying the Association, the Association shall reimburse the Grocery Store Owner of Grocery Store Lot for the reasonable amounts expended by it or them in performing or having others perform such emergency Common Facilities Maintenance not performed by the Association or its Manager as specified herein above.

6.2.4 Termination. A Manager may terminate its agreement with the Association only according to the terms of its agreement with the Association. A replacement Manager shall be replaced as provided in **Section 6.2.2** above. The replacement Manager may, but need not be, a Consenting Owner or its Affiliate.

6.2.5 Minimizing Operating Costs. The Association shall use their best efforts to retain a qualified Manager at a competitive price. Each Manager shall be charged with the responsibility of performing the Common Facilities Maintenance on behalf of the Association in such a manner as shall keep Operating Costs at a reasonable minimum while at the same time achieving the level of maintenance as required by this Declaration. Nothing herein shall preclude a Manager from employing its own personnel to perform parking lot sweeping, snow removal, refuse removal or other like actions for which a Manager incurs Operating Costs, and the Manager shall be entitled to collect for such services its agreed upon compensation as specified in the agreement between the Association and the Manager.

6.3 License to Carry Out Intent of this Declaration. Each Owner hereby grants to the Association, its agents and employees, a license to enter upon its Parcel to discharge the duties imposed upon the Association as specified in the Declaration, to perform the Common Facilities Maintenance and to otherwise carry out the obligations and directives of the Owners as specified in this Declaration.

6.4 Exclusion. Subject to the consent of the Grocery Store Owner of the Grocery Store Lot Building, not to be unreasonably withheld, conditioned, or delayed, and which shall be deemed granted unless denied in writing within ten (10) days of Declarant's written request therefor, Declarant shall have the right to allow Owners of the Parcels to maintain their own Parcels independently as long as Declarant, the Association, and such Owners enter into supplementary recorded agreements obligating such Owners to (a) comply with the maintenance standards hereof, and (b) pay a reasonable contribution towards the maintenance of the Common Facilities on the rest of the Shopping Center (such as access drives) used by such Owners. In such cases, the Owners shall not be required to otherwise share in costs of the Common Facilities or Operating Costs except as may otherwise be agreed between the same and Declarant. Grocery Store Owner shall have the right to elect to maintain the Grocery Store Lot independently as long as Grocery Store Owner and the Association enter into a supplementary recorded agreement obligating Grocery Store Owner to (a) comply with the maintenance standards hereof, and (b) pay a reasonable contribution towards the maintenance of the Common Facilities on the rest of the Shopping Center (such as access drives) less a credit for amounts actually paid by Grocery Store Owner towards maintaining the access drives and other Common Facilities located on the Grocery Store Lot. Following the recording of such supplementary recorded agreement, Grocery Store Owner shall not be required to otherwise share in costs of the Common Facilities or Operating Costs except as may otherwise be agreed between Grocery Store Owner and Declarant.

7. COMMON FACILITIES OPERATING COSTS

7.1 Common Facilities Budget. A budget for Common Facilities Operating Costs shall be formulated and made effective in the following manner, as applicable:

7.1.1 Submission for Review. At least sixty (60) days prior to the beginning of each calendar year, or at least thirty (30) days prior to the completion of construction and anticipated occupancy of the first Building in the Shopping Center, the Association shall submit to the Owners and Tenant Agents an estimated budget ("**Common Facilities Budget**") for the projected Operating Costs, Management Fee and Common Facilities Operating Costs for the ensuing calendar year (or, in the case of an initial partial calendar year, that ensuing partial year). The Common Facilities Budget shall identify separate cost estimates for major categories in accordance with good shopping center management practices.

7.1.2 Bids. In determining the Common Facilities Budget, the Association shall submit major items of Common Facilities maintenance work for competitive bid to responsible bidders. Major items shall be deemed single maintenance or repair items that cost \$25,000.00 or more in the aggregate for any calendar year. Upon an Owner's request, the names of the bidders and their respective bids shall be furnished to such Owner together with the Common Facilities Budget, and the contract shall be awarded to the low bidder unless the Association shall otherwise reasonably determine.

7.1.3 Approval by Owners. The Owners, or if one or more Consenting Owners have designated a Qualified Lessee as a Tenant Agent, then the designated Tenant Agents and remaining Owners, shall give written notice to Association of their approval or disapproval of the Common Facilities Budget before the later of December 10th or thirty (30) days after receipt of such Budget. Failure to give notice of approval or disapproval shall be deemed to be approval. If the Consent of the Owners cannot be obtained in accordance with Utah Code § 57-8a-215, as amended, the last approved Common Facilities Budget shall be binding upon the Owners and shall be utilized for next calendar year until a new Common Facilities Budget is approved.

7.1.4 Implementing Budget. After the Common Facilities Budget is approved, the Association shall contract with the approved low bidders, pay all of the Operating Costs, and use its reasonable efforts to perform the Common Facilities Maintenance in accordance with the Common Facilities Budget.

7.1.5 Emergency Repairs. Notwithstanding the foregoing, the Association shall have the right to make emergency repairs to the Common Facilities to prevent injury or damage to Person or property or to prevent disruption in the use of the Common Facilities, provided that the Association shall nevertheless advise the Owners and Tenant Agents of such emergency condition as soon as reasonably possible, including any corrective measure(s) taken and the cost thereof. If the cost of said emergency action exceeds Five Thousand Dollars (\$5,000.00), the Manager may charge a special assessment to the Owners and Tenant Agents, according to their respective obligations, together with evidence supporting such, and the parties responsible for payment of Operating Costs shall pay their Proportionate Share thereof within thirty (30) days. If the emergency cost is less than the amount collected, the excess shall be refunded to the parties making the payment in proportion to their original obligations or credited to future obligations, as is deemed reasonably appropriate by the Owners and Tenant Agents.

7.1.6 Unforeseen Items. The Association shall be entitled to reimbursement of actual expenses for any reasonably unforeseen non-emergency items not included in the Common Facilities Budget without first obtaining each Owner's and Tenant Agent's approval so long as the cumulative amount of such items does not exceed Fifty Thousand Dollars (\$50,000.00) in any calendar year.

7.1.7 Disagreement over Unbudgeted Items. In the event of a good faith disagreement between the Association and any Owner or Tenant Agent over the amount of or validity of any unbudgeted Common Facilities Charge billed to such Owner or Tenant Agent by the Association, such Owner or Tenant Agent may pay such amount under protest, and such Owner's or Tenant Agent's sole remedy shall be to refer such disagreement to arbitration in accordance with **Section 15.4** of this Declaration.

7.1.8 Amendment to Common Facilities Budget. Nothing herein shall preclude and amendment to a previously approved Common Facilities Budget provided that such amendment is adopted according the procedures of this **Section 7.1**.

7.2 Operating Costs. The following expenses shall be referred to as "**Operating Costs**":

7.2.1 General. Costs for performing Common Facilities Maintenance, as described in **Section 7.1**, and Common Lighting costs as described in **Section 5.6** above;

7.2.2 Employees. The expenses (including without limitation hourly compensation paid to or on behalf of employees, and based upon competitive hourly rates) of the Manager as specified in the Manager's Agreement for work done at the Shopping Center in performing the Common Facilities Maintenance;

7.2.3 Third Parties. The expenses incurred to unrelated third parties in performing the Common Facilities Maintenance;

7.2.4 Liability Insurance. Commercial general liability insurance premiums associated with the operation and maintenance of the Common Facilities in an amount of not less than Three Million (\$3,000,000.00) as provided in **Section 7.5** below and casualty insurance on the Common Facilities;

7.2.5 Real Estate Taxes. Real Estate Taxes on the Shopping Center, unless assessed against each Parcel and paid separately pursuant to **Article 9** below;

7.2.6 Management Fees. Management fees incurred pursuant to the provisions of **Section 7.4.1**.

7.2.7 Reserves. Reserves for capital expenses as provided in **Section 7.3.2** below.

7.2.8 Amounts Paid or Assessed by Master Association. In the event the Master Association determines the Association has failed to perform its responsibilities under this Declaration, then the expense incurred by the Master Association in performing those responsibilities of the Association shall be deemed an Operating Cost. Operating Costs shall also include, at the election of the Master Association, any amounts assessed by the Master Association pursuant to the Master Declaration.

7.3 Adjustment to Operating Costs. The Operating Costs shall not include or shall be adjusted to reflect the following:

7.3.1 Exclusions. There shall not be included in the Operating Costs the following: (i) costs of original construction (as distinguished from maintenance and repair) of the Common Facilities or any additions or expansion thereof; (ii) the costs of correcting defects in the design or construction of the Shopping Center and/or Common Facilities, or repair and/or replacement of any of the original materials or equipment required as a result of such defects; (iii) repairs or other work made necessary by fire or insurable risk or the exercise of the right of eminent domain, to the extent compensated thereunder; (iv) expenses incurred associated with the construction, maintenance, repair, build-out, renovation, or redecoration of any portion of any Building in the Shopping Center; (v) any items for which the Association, Manager, Owners or Declarant is/are reimbursed or compensated (excluding assessments), including, without limitation, contractors' warranty or right of reimbursement by any Authorized Occupant of the Shopping Center; (vi) expenses in connection with services or other benefits of a type which are not provided to all the Owners or for the benefit of all Parcels, but which are provided only to or

for one or a few Owners, or fewer than all of the Authorized Occupants of the Shopping Center but nothing herein precludes the Association from allocating such items to such Owners and including such Owners' share thereof with the other obligation of such Owners; (vii) costs, fines, penalties, or fees assessed due to a violation of any federal, state or local law, statute or ordinance, or any rule, regulation, judgment or decree of any governmental rule or authority, including without limitation any Environmental Laws or the remediation of any Hazardous Substances unless the same is attributable to the Association; (viii) any costs representing an amount paid to a person, firm, corporation or other entity related to the Declarant or an Owner serving as the Manager that is in excess of the amount that would have been paid in the absence of such relationship, such as to an independent third-party property management company or contractor; (ix) costs incurred by an Owner as a result of any claim which would have been covered by the insurance that the Association is required to maintain for the benefit of the Owners according to the requirements of this Declaration but the Association fails to obtain; (x) any service, administration, management, or overhead costs or charges in addition to the actual cost of maintenance (except that the Management Fee or other charges due a Manager pursuant to executed management agreement, may be charged to Owners in accordance with the provisions of **Sections 7.2 and 7.4**); (xi) the costs associated with the Manager's employees, such as wages, salaries, bonuses, benefits, or employment taxes, except to the extent such employees actually perform Common Facilities Maintenance and other services specified in an executed management agreement, in the Shopping Center as documented by the Manager; (xii) interest or payments on any of Declarant's or an Owners' construction or permanent financing for any Parcel located in the Shopping Center or ground lease payments; (xiii) legal and leasing fees or commissions related to the development of, or the leasing or enforcement of leases or other similar agreements in the Shopping Center; or (xiv) costs required to be paid by individual Owners, as described in **Section 2.6.5, Section 6.1.12 and Article 13**.

7.3.2 Capital Expense Reserve. In the event the Association anticipates that any single item of future Common Facilities Maintenance of a capital improvement is expected to cost in excess of \$50,000.00 as reasonably estimated (including but not limited to asphalt resurfacing/repaving, slurry sealing, patching and crack sealing, and maintenance and repair to curb, gutter, sidewalk or adjoining streets required by a municipal authority or assessment district); and has a useful life exceeding three (3) years, the Association is authorized to include within the Operating Costs and the Annual Common Facilities Budget, a proportionate share of such estimated future cost of such capital improvement, such proportion equal to the future estimated cost divided by the remaining estimated useful years of the existing capital improvement.

7.3.3 Operating Reserve. The Association may also include as an Operating Cost a reasonable assessment to create an operating reserve not to exceed ten percent (10%) of all other Operating Costs.

7.4 Common Facilities Charge.

7.4.1 Determination. Each Owner shall pay to the Association its Proportionate Share of the Operating Costs (as calculated pursuant to **Section 7.4.2**) which Operating Costs shall include a management fee equal to the amount required by the terms of the management agreement between the Association and the Manager (the "**Management Fee**") but not exceeding ten percent

(10%), of all Operating Costs (other than the Management Fee) subject to the following exceptions, terms and conditions:

7.4.1.1 Operating Costs for the purpose of computing the Management Fee, shall not include any charges or costs incurred for (a) insurance premiums, (b) real estate and personal property taxes, (c) depreciation, and (d) any item of capital expenditure to the extent the cost of such expenditure exceeds Fifteen Thousand Dollars (\$15,000.00).

7.4.1.2 There shall be no Management Fee payable to Declarant or an Owner acting as the Manager during any period of time during which such Manager delegates or contracts out substantially all of the management of the Common Facilities Maintenance; provided, however, that notwithstanding the foregoing, if the Declarant or Owner acting as the Manager engages one of its affiliates to manage the Common Facilities Maintenance, then either such Manager or the affiliate, but not both, may collect the Management Fee.

7.4.1.3 The amount due from each Owner pursuant to this Section is referred to as the “**Common Facilities Charge.**”

7.4.1.4 In the event of a disagreement between Association, and an Owner over the amount of or validity of any Common Facilities Charge billed to such Owner by the Association, the Owner shall have the right to protest said amount in controversy and to refer such matter to arbitration in accordance with **Section 15.4** of this Declaration. If not included within an approved Common Facilities Budget, no single non-budgeted item of Common Facilities Maintenance in excess of Fifteen Thousand Dollars (\$15,000.00) other than an emergency repair shall be made without the prior Consent of Owners.

7.4.2 Payment. Based upon the Common Facilities Budget approved as provided in **Section 7.1**, the Association shall notify each Owner in writing of the amount of its monthly installment of the Common Facilities Charge for the applicable fiscal period. Each Owner shall pay, or cause its Authorized Occupants to pay, the Owner’s Common Facilities Charge as specified in such notice monthly in advance (on or before the first day of each month). Within sixty (60) days following the close of each calendar year, the Association will furnish to each Owner and where applicable its Tenant Agent, a statement of the actual amount of Operating Costs, the calculation of each Owner’s Proportionate Share, and such Owner’s Common Facilities Charge based on actual expenditures for the previous calendar year. If the actual amount of an Owner’s Common Facilities Charge is less than the total amount paid by such Owner (or others for such Owner’s benefit) for such period, and such amount is more than one month’s budgeted Common Facilities Charge to such Owner, the excess shall be refunded to such Owner (and Owner shall refund it to the party entitled thereto) together with said annual statement; otherwise the amount will be applied to the next month’s Common Facilities Charge. If the actual amount of an Owner’s Common Facilities Charge exceeds the amount paid by such Owner (or for its benefit) for such period, the Owner shall pay, or cause the party obligated therefore to pay, to the Association the amount shown as due thereon within thirty (30) days following the receipt of the Association’s statement. If at any time or times, it reasonably appears to the Association that the amount of such Owner’s Common Facilities Charge for the current calendar year will vary from the amount set forth in the Association’s initial notice, the Association may, by written notice to the Owner, revise

the monthly installment for such fiscal period, and subsequent monthly payments by the Owner (or its Authorized Occupant) for such year will be based upon the revised estimate.

7.4.3 Audit. The annual statement of Common Facilities Charges shall include reasonable detail as to each Operating Cost incurred throughout the year. Upon request by any Owner or its Tenant Agent, the Manager shall provide such requesting Owner or Tenant Agent any additional documentation reasonably requested by such requesting party supporting the annual statement. Each Owner or Tenant Agent shall have the right to audit the Association's records relating to Operating Costs (including Management Fees) and Common Facilities Charges within three (3) years after receipt of the annual statement upon ten (10) days' written notice to the Association. If such audit should reveal an overstatement of actual expenses by five percent (5%) or more, the Association shall pay for the reasonable cost and expenses of such audit and refund any excess amount paid by the Owner within thirty (30) days after written notice thereof. Any understatement or overstatement discovered by such audit shall be adjusted as provided in **Section 7.4.2**. The cost of any such Audit imposed upon the Association shall be deemed an Operating Cost.

7.4.4 Commencement of Charges. Notwithstanding the provisions of this **Section 7.4** to the contrary, until the initial occupant of the Grocery Store Lot Building opens for business, the Grocery Store Owner of the Grocery Store Lot shall not be obligated to pay its Proportionate Share of Operating Costs. Each other Owner of a Parcel shall become obligated to pay and shall pay all its Proportionate Share of Operating Costs commencing at such time as a Building located upon such Owner's Parcel receives a certificate of occupancy. All payments of an Owner's Proportionate Share shall be made in accordance with the terms and conditions of this Declaration. During the Declarant Control Period, the Declarant may, but shall not be obligated to, satisfy all Operating Expenses not covered by payments of Common Facilities Charges received from Owners.

7.5 Common Facilities Liability Insurance. The Association shall obtain and maintain for the benefit of the Owners and other parties identified herein, a policy of commercial general liability on an "occurrence basis" against claims for bodily injury, personal injury and property damage occurring on, in or about the Shopping Center and the adjoining streets, sidewalks and passageways, with a combined single limit coverage in the minimum amount of Three Million Dollars (\$3,000,000.00) and with broad form contractual liability coverage. Such policy is intended to provide secondary coverage to the liability policy that each Owner is required to obtain pursuant to **Section 8.1**. In the event such a policy is not available in such coverage amount, such policy may be supplemented with an "umbrella" policy to achieve such coverage amount. The policy shall endorse the Association, the Owners, the Manager, and Authorized Occupants and their respective officers, directors, managers, agents, and any buyer as additional insureds. Each Owner or Authorized Occupant which maintains a primary liability insurance coverage, shall cause its insurance carrier to waive any rights of subrogation against the Association and its managers and agents. The Association's policy of liability insurance shall be issued by an insurance company with an AM Best rating of at least A- authorized to do business in the State of Utah and shall contain an endorsement requiring thirty (30) days' written notice to any additional insured before cancellation or change in the coverage, scope or amount of the policy. The Association shall furnish the Owners and Qualified Lessees certificates evidencing the insurance coverage required under this Declaration, upon written request referencing this Section. If the limits of the

Association's liability insurance and/or deductibles become inadequate due to the changes in overall price level or the size of claims being experienced, the Association and the Owners shall agree upon new limits and deductibles based on shopping center industry practices for similarly situated and comparable shopping centers; but if they cannot agree, the Association shall establish new limits and deductibles recommended by an insurance agent who is experienced in providing insurance for comparable shopping centers, who is agreed upon by the Association and the Owners, and who shall not have liability to any Person for its recommendations.

8. INSURANCE FOR THE SHOPPING CENTER

8.1 Liability Insurance. Each Owner shall obtain and maintain, or cause its Authorized Occupant to obtain and maintain, from the time development of its respective Parcel occurs, a policy of commercial general liability on an "occurrence basis" against claims for bodily injury, personal injury and property damage occurring on, in or about the Shopping Center (including but not limited to the Buildings, the Common Facilities, and the adjoining streets, sidewalks and passageways), with such insurance to be in single limit coverage in the minimum amount of Three Million Dollars (\$3,000,000.00) and with a deductible not in excess of Ten Thousand Dollars (\$10,000.00). In the event such a policy is not available in such coverage amount, such policy may be supplemented with an "umbrella" policy to achieve such coverage amount. The liability insurance maintained by each Owner and/or Authorized Occupant shall be primary coverage and non-contributing to the liability insurance maintained by the Association as provided in **Section 7.5**. All such policies of insurance shall be issued by companies with an AM Best rating of at least A- authorized to do business in the State of Utah. Upon request, each Owner agrees to furnish Association certificates evidencing the insurance coverage required under this Section or elsewhere in this Declaration.

8.2 Commercial Property Insurance. Each Owner shall obtain and maintain a commercial property insurance policy with "causes of loss - special form" covering all of the Building and Common Facilities located on its Parcel, in an amount equal to no less than the full replacement cost thereof, reduced by items such as footings, foundations and other concrete improvements.

8.3 Release/Waiver of Subrogation. Whenever (i) any loss, cost, damage or expense resulting, directly or indirectly, from fire, explosion or any other casualty, accident or occurrence is incurred by an Owner or Authorized Occupant, and (ii) at the time such Owner or Authorized Occupant is required to be covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then such Owner or Authorized Occupant hereby releases each other Owner, the Association, and Authorized Occupant from any liability such Owner and Authorized Occupant may have on account of such loss, cost, damage or expense, other than acts constituting gross negligence and/or willful misconduct, and shall cause its commercial property insurance carrier to waive any rights of subrogation under such policy.

9. TAXES

9.1 Real Estate Taxes. "Real Estate Taxes" shall mean, with regard to any Parcel: (a) all ad valorem real estate taxes and assessments on the land and Building and Common Area Facilities comprising the Parcel (adjusted after protest or litigation), exclusive of penalties and

interest; and (b) the expense of protesting, negotiating or contesting the amount or validity of any real estate taxes, charges or assessments, such expenses to be applicable to the tax calendar year of the Real Estate Taxes contested, protested or negotiated; provided, however, that the following shall not be regarded as "Real Estate Taxes": (i) any franchise, corporate, estate, inheritance, succession, capital levy, or transfer tax of an Owner, (ii) any income, profits, sales or revenue tax, (iii) any other tax, charge, or levy upon the Shopping Center unless it is imposed in lieu of Real Estate Taxes, (iv) any assessments against the Shopping Center or any Parcel therein, for the initial costs of development of the Shopping Center, which Declarant elects to be placed against the Shopping Center in the form of an assessment or tax payable over a term of years; i.e., sewers initially installed, connection of utilities or fees for connecting to utilities, installation of required traffic control devices, off-site street work, etc., or (v) any tax or assessment on rent or other charges payable by any occupant of the Shopping Center under any lease and imposed by state, federal, local or any other regulatory agency except (other than a sales tax on rent if imposed) if imposed in lieu of Real Estate Taxes.

9.2 Tax Obligations. If the applicable Parcel constitutes a separate tax lot or parcel, each Owner shall pay directly to the taxing authorities when due the Real Estate Taxes assessed against the Parcel in which the Owner has an interest, including the portion of the Common Facilities located on such Owner's Parcel. Each Owner shall have the right to contest the amount or validity of all or any part of said taxes and assessments and to obtain reimbursement from its Authorized Occupants pursuant to agreement with such Authorized Occupants. In the event of such contest, the contesting Person shall prosecute such contest with diligence, shall take such steps as are necessary to avoid a tax sale of its Parcel and, upon final determination of such contest, shall promptly pay when due the taxes and assessments then due. In the event that the Parcels are not separate tax parcels, the Association shall, to the extent it has received payment therefor from the Owners or Authorized Occupants, pay the Real Estate Taxes for all of such Parcels which are not separately assessed and such Real Estate Taxes shall be an element of Operating Costs allocable to and payable by the Owners of such Parcels as set forth in **Article 7**. If any Owner pays real estate taxes separately assessed to its Parcel, such Owner shall not be obligated to contribute toward the real estate taxes of another Parcel or any other portion of the Shopping Center.

10. EFFECT OF SALE OF A PARCEL BY AN OWNER OR OF ASSIGNMENT BY A TENANT AGENT

10.1 Sale by Owner. In the event an Owner sells all or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner or Consenting Owner in connection with the property sold or conveyed by it arising under this Declaration after the effective date of the sale or conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the effective date of the sale or conveyance of title.

10.2 Sale by Consenting Owner. In the event a Tenant Agent with respect to a Parcel sells or assigns all of its rights in all or any portion of the Parcel, sends notice of such sale or assignment to the Owner of such Parcel, and records notice of such sale or assignment in the Recorder's Office, such Tenant Agent shall thereupon be no longer designated as a Tenant Agent and shall be released and discharged from any and all obligations of a Tenant Agent in connection

with the Parcel and/or the interest in which was sold or assigned by it arising under this Declaration after the effective date of the sale or assignment but shall remain liable for all obligations arising under this Declaration prior to the effective date of the sale or assignment.

10.3 Obligation of New Owner or Tenant Agent. An Owner or Tenant Agent designated as such of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof or interest therein after the effective date of the acquisition of title or, as applicable, the receipt of an assignment of an interest.

10.4 Miscellaneous. Nothing contained herein shall bar or restrict the operation of **Articles 11 and 12** which permit the filing of a Notice of Lien and foreclosure of the same upon a Parcel for certain defaults under this Declaration. Notwithstanding the foregoing to the contrary, no first priority Lienholder or purchaser at a foreclosure sale of a first mortgage or first deed of trust shall be liable for any obligation arising under this Declaration prior to the sale or conveyance of title pursuant to such foreclosure or deed in lieu thereof.

11. DEFAULTS

11.1 Assessments and Other Charges. In the event any Owner ("**Defaulting Party**") being any Owner in default pursuant to the provisions of **this Article 11** of this Declaration) fails or refuses to pay when due its assessments, including but not limited to Common Facilities Charge or any other amount owed to the Association, Declarant, or other Owner pursuant to the provisions of this Declaration (a "**Non-defaulting Party**"), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted by the Non-defaulting Party against the Defaulting Party for such amount plus interest from and after the date said obligation was due and payable at the Default Rate. Furthermore, the Non-defaulting Party shall have a "**Common Facilities Lien**" on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) by following the procedures specified in **Section 12.4** and filing a Notice of Lien in the Recorder's Office for such amount plus accrued interest at the Default Rate as set forth above, plus any costs and expenses of pursuing any legal or other action to obtain such amount, including without limitation reasonable attorneys' fees and the fees of any expert retained for such action (including without limitation such fees as may be incurred in any appeal or in bankruptcy court) (collectively the "**Collection Costs**," including all such collection costs, expenses, and fees as the Non-defaulting Party may be entitled pursuant to **Section 11.4** of this Article). The Association, by its Trustee (identified in **Section 11.6**) may foreclose the Common Facilities Lien against such Parcel in the manner of a Trust Deed.

11.2 Deficiencies. In the event that any Owner shall fail to perform any obligation imposed upon an Owner under this Declaration, including without limitation, the obligation to obtain and maintain insurance, as required by this Declaration, any Non-defaulting Party may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "**Deficiencies**") of the Defaulting Party's performance of its obligations, monetary or otherwise. The Defaulting Party shall have thirty (30) days after receipt of the said notice in which to correct the Deficiencies or in

which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said thirty (30) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. If necessary for the safety of the Shopping Center or to prevent a gap in, or a lapse of, any insurance, the thirty (30) day time period referred to above may be appropriately shortened. In the event that the Defaulting Party shall fail or refuse to correct or to begin and continue diligently thereafter to correct the Deficiencies, as the case may be, the Non-defaulting Party may, at its option, correct the Deficiencies. In the event that the Non-defaulting Party shall at its option correct the Deficiencies, the Defaulting Party shall, promptly upon receipt from the Non-defaulting Party of an itemized invoice for the costs incurred by the Non-defaulting Party in correcting the Deficiencies, pay all such costs and expenses to the Non-defaulting Party, together with interest at the Default Rate from the date of the Non-defaulting Party's payment of the same until paid, plus Collection Costs. Furthermore, the Non-defaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) by filing a Notice of Lien in the Recorder's Office for such amounts.

11.3 Taxes. In the event any Owner fails to pay when due all Real Estate Taxes that the Owner is obligated to pay, which failure continues for a period of ten (10) days after receipt of written notice thereof from any Non-defaulting Party, such failure shall constitute a default, and any Non-defaulting Party may, but is not obligated to, thereafter pay such Real Estate Taxes if such Real Estate Taxes are delinquent and the Defaulting Party has not commenced and is not duly prosecuting any protest of such taxes. If such Real Estate Taxes are paid by a Non-defaulting Party, the Non-defaulting Party shall then provide evidence of payment and an invoice for the expenses incurred. The Defaulting Party shall have ten (10) days after receiving such evidence of payment and invoice within which to pay the amounts due, together with interest at the Default Rate from the date of the Non-defaulting Party's payment of the Real Estate Taxes until paid, plus Collection Costs, if any. If the Defaulting Party does not so pay, then the Non-defaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) by filing a Notice of Lien in the Recorder's Office, for such amounts.

11.4 Default. Except as specified in **Section 11.2** (Deficiencies), and **Section 11.3** (Taxes) or other section in this Declaration where a specific remedy and/or cure period is specified, a Person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from receipt of written notice from any Owner or Authorized Occupant or the Association specifying the particulars in which such Person has failed to perform the obligations of this Declaration unless such Person, prior to the expiration of said thirty (30) days (or other such period as is elsewhere specified), has rectified the particulars specified in said notice of default. However, such Person shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period (or other specified time period) and such Person is using good faith and reasonable efforts to rectify the particulars specified in the notice of default.

11.5 Remedies. In addition to the remedies set forth in this **Article 11** and in **Article 12** of this Declaration, each Person entitled to enforce this Declaration shall have all other remedies provided by law and equity to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Person, shall exclude any other remedy herein or by law or equity provided, but each shall be cumulative and non-exclusive.

11.6 **Trustee.** The “Trustee” for purposes of this Article 11 shall be the Association’s attorney of record designated by the Association.

12. ASSOCIATION, MEMBERSHIP, VOTING, POWERS AND ASSESSMENTS

12.1 Membership and Voting Rights.

12.1.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Parcel in which the Owner has the necessary interest, and shall not be separated from the Parcel to which it appertains.

12.1.2 **Voting Rights.** The Association shall have the following described two classes of voting membership:

12.1.2.1 **Class A.** Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to the number of votes equal to the total Floor Area assigned to such Member’s Parcel in which the interest required for membership in the Association is held.

12.1.2.2 **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to the number of votes equal to three (3) multiplied by the cumulative total Floor Area assigned to all of the Parcels in which the Declarant holds the interests required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

- (a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
- (b) The expiration of ten (10) years after the date on which this Declaration is filed for record in the office of the Recorder; or
- (c) The Declarant voluntarily elects to convert its Class B Membership to Class A Membership.

The period commencing upon the recording of this Declaration with the Recorder and ending upon the first to occur of the foregoing three (3) events is referred to herein as the “**Declarant Control Period**”.

12.1.3 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Parcel, the vote relating to such Parcel shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Parcel concerned unless an objection is immediately made by another Owner of the same Parcel. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

12.1.4 **Record of Ownership.** Every Owner shall promptly cause to be duly filed of record with the Recorder’s Office the conveyance document to such Owner of such Owner’s

Parcel. Each Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of \$25.00, who shall maintain a record of ownership of the Parcels. Any Owner who mortgages such Owner's Parcel or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a Reimbursement Assessment in accordance with the provisions of **Section 12.3**.

12.2 Duties and Powers of the Association.

12.2.1 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its the Association Documents; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Shopping Center:

12.2.1.1 The Association shall accept all Owners as members of the Association.

12.2.1.2 The Association shall maintain, repair, and replace all Common Facilities, excluding only any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. In the event that the need for maintenance or repair of Common Facilities as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of an Owner's Authorized Occupant, the Association shall have the right to cause such repairs to be made by the Association and the cost of such maintenance or repair, together with an administrative charge equal to ten percent (10%) of such cost, shall be added to and become part of the Reimbursement Assessment (as set forth in **Section 12.3**) to which such Parcel is subject.

12.2.1.3 To the extent not assessed to or paid by the Owners directly, the Association shall pay all Real Estate Taxes levied upon any portion of the Common Facilities, provided that the Association shall have the right to contest or compromise any such Real Estate Taxes.

12.2.1.4 The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration to be obtained and maintained by the Association.

12.2.1.5 The Association may contract with a Manager to manage and maintain the Common Facilities, consistent with the requirements of **Section 6.2**.

12.2.2 Powers and Authority of the Association. The Association shall have all the powers set forth in the Association Documents, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy

and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following specific powers:

12.2.2.1 Following any notice and cure rights under **Article 11**, the Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Parcel for the purpose of maintaining and repairing the Common Facilities located upon such Parcel, for the purpose of maintaining and repairing any Building or other improvement located upon such Parcel if the Owner fails to maintain or repair such Building or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Parcel in violation of **Article 2** or **3** of this Declaration. The Association shall have the right to close all or any portion of a Common Facility to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules and Regulations promulgated by the Association's Board of Directors (the "**Board of Directors**") or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules and Regulations.

12.2.2.2 In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Facilities, in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Facilities, and in exercising its rights to maintain and repair any Building or other improvement located on any Parcel if the Owner fails to maintain or repair such Building or improvement, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Facilities on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration (ii) to pay and discharge any and all liens placed upon any Parcel on account of any work done or performed by the Association in exercising its rights to maintain and repair any Building or other improvement located on such Parcel if the Owner fails to maintain or repair the same, and (iii) to obtain, contract and pay for, or to otherwise provide for:

(a) Construction, maintenance, repair and landscaping of the Common Facilities, and maintenance and repair of any Building or other improvement located on a Parcel if the Owner fails to maintain or repair the same, on such terms and conditions as the Board of Directors shall deem appropriate.

(b) Such insurance policies or bonds as the Board of Directors may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board of Directors and the Owners;

(c) Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board of Directors may from time to time deem desirable;

(d) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board of Directors may deem desirable;

(e) Fire, police and such other protection services as the Board of Directors may deem desirable for the benefit of the Owners or any of the Property; and

(f) Such materials, supplies, furniture, equipment, services and labor as the Board of Directors may deem necessary.

12.2.2.3 The Board of Directors may delegate by resolution or contract to the Manager any of its powers under this Declaration; provided, however, that the Board of Directors cannot delegate to such Manager the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00), or the power to sell, convey, mortgage, or encumber any Common Facilities.

12.2.3 Association Rules and Regulations. The Board of Directors, from time to time and subject to the provisions of this Declaration, may promulgate, adopt, amend, repeal and enforce reasonable, non-discriminatory rules and regulations (“**Rules and Regulations**”) governing, among other things: (a) the use of the Common Facilities, including the regulation of employee parking; (b) the use of any roads or utility facilities owned by the Owners or the Association; (c) the collection and disposal of refuse; (d) the types of animals permitted and the maintenance of permitted animals on the Shopping Center Property (provided that there shall be no prohibition for the use or presence of service animals); and (e) other matters concerning the use and enjoyment of the Shopping Center and the conduct of Authorized Occupants and the Benefitted Parties.

12.2.4 Limitation of Liability. No member of the Board of Directors acting in good faith shall be personally liable to any Owner, Benefitted Parties, or any other person for any error or omission of the Association, its officers, representatives and employees, the Board of Directors, any committee or the Manager.

12.2.5 Insurance. The Association shall secure and at all times maintain the following insurance coverage:

12.2.5.1 A policy or policies insuring the Association as specified in **Section 7.5.**

12.2.5.2 In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Shopping Center in construction, nature and use.

12.2.5.3 With respect to all insurance secured and maintained by the Association:

(a) The Association shall have the authority to adjust losses.

(b) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(c) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and Authorized Occupants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

12.2.6 Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of the total Floor Area for all Parcels shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

12.3 Assessments.

12.3.1 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Parcel, be deemed to covenant and agree to pay to the Association the periodic assessment (Common Facilities Charge) described in **Section 7.4** and Special Assessments and Reimbursement Assessments described in this **Section 12.3**, together with interest at the Default Rate and Collection Costs hereinafter provided for. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Parcel with respect to which such assessment is made; and (b) the personal obligation of the Person who is the Owner of such Parcel at the time the assessment falls due. No Owner may exempt himself or his Parcel from liability for payment of assessments by waiver of his rights concerning the Common Facilities, by abandonment of its Parcel, or the designation of a Tenant Agent as specified in **Section 1.1.21.4**. In a voluntary conveyance of a Parcel, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Parcel at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

12.3.2 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of maintaining, repairing, replacing and managing the Common Facilities and making repairs to Buildings and other improvements as permitted in this **Article 12**, including but not limited to the enhancement of the appearance and aesthetics of the Shopping Center. The use made by the Association of funds obtained from assessments may include, but is

not limited to, payment of taxes, if any, and insurance on the Common Facilities; maintenance, repair and improvement of the Common Facilities; establishing and funding a reserve to cover major repairs or replacements of improvements within the Common Facilities; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, purposes, or rights under the Association Documents..

12.3.3 Special Assessments. For the purposes identified in **Sections 7.1.5** or **7.1.6**, the Association may levy special assessments (“**Special Assessments**”) for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonable capable of being fully paid with funds generated by periodic assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Facilities. Any such Special Assessments must be assented to by the Consent of Owners present in person or represented by proxy are entitled to cast a vote at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

12.3.4 Reimbursement Assessment on Specific Parcel. In addition to the periodic assessment and any Special Assessment authorized pursuant to **Sections 12.3.1, 12.3.2** and **12.3.3** above, the Board of Directors may levy at any time Special Assessments (a) on each Parcel specifically benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Facilities made on the written request of the Owner of the Parcel to be charged; (b) on each Parcel the Owner or Authorized Occupant of which shall cause any damage to the Common Facilities necessitating repairs; and (c) on each Parcel as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to **Section 12.2.2.1, Section 11.1** or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as “**Reimbursement Assessments**”). The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorneys’ fees, and shall be allocated among the affected Parcels according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Parcels benefitted.

12.3.5 Uniform Rate of Assessment. Except as provided in **Section 12.3.4** above, periodic and Special Assessments shall be fixed at a uniform rate for each square foot of Floor Area assigned for all Parcels upon which a Building has been erected, further provided, that in the event that no Building has been erected upon a Parcel, such Parcel shall nevertheless be subject to an annual periodic assessment of Three Hundred Dollars (\$300.00) per acre of such Parcel, determined to the nearest one-tenth of an acre and such minimum assessment shall not reduce the amount of periodic or Special Assessments allocated among the total Floor Area for all other Parcels upon which Buildings have been erected.

12.3.6 Periodic Assessment Due Dates. The periodic assessments (Common Facilities Charges) provided for herein shall commence as to all Parcels as provided in **Section 7.4.4**. The first periodic assessment shall be adjusted according to the number of days remaining

in the month of conveyance, contract or occupancy as the case may be. Thereafter and except as provided below, all periodic assessments shall be due and payable on the first day of each month. A periodic assessment not paid within ten (10) days of the due date thereof shall be deemed late and subject to a late fee of \$15.00. At least fifteen (15) days prior to the effective date of any change in the amount of the periodic assessment, the Association shall give each Owner and Tenant Agent written notice of the amount and the first due date of the assessment concerned.

NOTWITHSTANDING THE FOREGOING, with the Consent of the Owners, the Association may provide for the payment of periodic assessments on a quarterly basis, provided such periodic assessments are payable in advance.

12.3.7 Certificate Regarding Payment. Upon the request of any Owner, Tenant Agent, or prospective purchaser or encumbrancer of a Parcel, the Association shall issue a certificate stating whether or not all assessments respecting such Parcel are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

12.3.8 Effect of Non-Payment; Remedies. Any assessment (including periodic assessments, Special Assessments, or Reimbursement Assessments) not paid when due, together with the hereinafter provided for interest and Collection Costs shall be, constitute and remain a continuing lien on the affected Parcel; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Parcel recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the Default Rate and the Association may bring an action either against the Owner that is personally liable for such assessment or to foreclose the lien against the Parcel. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

12.4 Procedure. The lien provided for in **Section 11.1** and **Section 12.3.8** shall be referred to herein as the "**Common Facilities Lien**" and shall only become effective when a Notice of Lien is filed for record in the Recorder's Office, by the Association, the Owners or another Non-defaulting Party as a claim for a Common Facilities Lien against the Defaulting Party's Parcel or interest therein. Such Notice of Lien shall contain at least the following:

12.4.1 Statement. A reference to this Section of the Declaration and an itemized statement of all amounts due and payable pursuant hereto, except as to Collection Costs, and, for Collection Costs, a statement that such are included in the Common Facilities Lien and will be itemized and specifically set forth at the time of foreclosure or immediately prior to payment;

12.4.2 Parcel Description. A description sufficient for identification of that Parcel in which the Defaulting Party has an interest and which is the subject of the Common Facilities Lien;

12.4.3 Owner. The name of the Owner or reputed Owner of the Parcel which is the subject of the Common Facilities Lien;

12.5 Defaulting Party. The name of the Defaulting Party and the extent of the Defaulting Party's interest in the Parcel if the Defaulting Party is other than the Owner; and

12.6 Non-defaulting Party. The name and address of the Non-defaulting Party or its agent.

12.7 Priority. The Common Facilities Lien, when the same is perfected against a Parcel by the filing of a Notice of Lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such Parcel after the time of filing the Notice of Lien. Prior to the filing of a Notice of Lien, unperfected Common Facilities Liens shall in all cases be subordinate to each first mortgage lien that encumbers a Parcel or an interest therein from time to time (i.e., a mortgage or deed of trust that is given by the Owner of a Parcel and/or the Owner of improvements on a Parcel, that secures repayment of a loan and that is in a first priority position as to voluntary liens). The Common Facilities Lien shall be for the use and benefit of the Non-defaulting Party having a right thereto pursuant to this Declaration and may be enforced and foreclosed as a mortgage in a suit or action brought in any court of competent jurisdiction or pursuant to a power of sale held by the Trustee designated in **Section 11.6**.

12.8 Number and Election of Directors.

12.8.1 The Board of Directors shall consist of not less than three (3) directors ("**Directors**"). The initial Directors shall, unless Declarant shall appoint others in their stead, hold office until the election or appointment of their successors at the first annual meeting after expiration of the Declarant Control Period. Thereafter, subject to the terms and conditions of **Sections 12.8.3** and **12.8.4** below, each Director will hold office for a term as follows: two (2) Directors shall be elected for a term of one year and the remaining Directors shall be elected for a term of two years, and at each annual meeting thereafter the Owners shall elect the number of Directors whose terms are to expire, for a term of two years each.

12.8.2 Powers of the Board of Directors.

12.8.2.1 Except as provided in the Association Documents, the Board of Directors may act on behalf of the Association in all instances.

12.8.2.2 The Board of Directors may retain by written contract the Manager who shall be responsible for the routine operation and maintenance of the Common Facilities.

12.8.2.3 The Board of Directors may not act on behalf of the Association to:

- (a) amend this Declaration;
- (b) terminate the Association or this Declaration;
- (c) select Directors to the Board of Directors; or

(d) determine Directors' qualifications, powers, duties, or terms of office.

12.8.3 Appointment of Directors.

12.8.3.1 Subject to the terms and conditions of **Sections 12.8.3.2 and 12.8.3.3** below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period.

12.8.3.2 Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

12.8.3.3 During the thirty (30)-day period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect a Board of Directors of not less than three (3) Directors as set forth in **Section 12.8.1** above. Such Directors shall take office upon election.

12.8.3.4 The Declarant need not designate a Manager during the Declarant Control Period.

12.8.4 Removal of Directors.

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Each Director, other than a Director appointed by Declarant, may be removed, with or without cause, by the Consent of Owners.

12.8.5 Replacement of Directors.

(a) Vacancies on the Board of Directors created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Board of Directors created by the removal, resignation or death of a Director appointed or elected by the Owners shall be filled by a Director elected by the Owners.

(c) Any Director elected or appointed pursuant to this **Section 12.8.5** shall hold office for the remainder of the unexpired term of the Director that Director replaced.

12.8.6 Board of Directors Liability. No Director or officer of the Association shall be liable to the Owners for any mistake in judgment, for negligence, or on other grounds,

except for such Director's or officer's own individual and willful misconduct or bad faith. The Owners and Association shall indemnify and hold harmless each Director and officer from and against all liability to third parties arising out of any contract made by the Board of Directors on behalf of the Association or Owners, unless such contract was made under circumstances of willful misconduct or bad faith. The liability of an Owner arising out of the foregoing indemnification shall be limited to the total liability concerned multiplied by such Owner's Proportionate Share. The Association shall be authorized to obtain liability insurance for the errors and omissions of its Directors and officers.

12.8.7 Officers. The Association shall have a president and a secretary and such other officers as the Bylaws of the Association shall specify.

13. INDEMNITY; HAZARDOUS SUBSTANCES

13.1 Subrogation Waiver. To the extent that liability of an Owner or Authorized Occupant to another Owner or Authorized Occupant or employees, agents, contractors, invitees, tenants, subtenants, successors and assigns of the same is covered by insurance, each Owner or Authorized Occupant respectively waives all rights of subrogation against the other Owners or Authorized Occupants, and agrees to cause its insurer to waive its rights of subrogation against the other Owners or Authorized Occupants to the same extent provided above.

13.2 Indemnification. Subject to the provisions of **Section 13.1**, each Owner and Authorized Occupant hereby agrees to indemnify, defend and hold harmless the other Owners, Authorized Occupants, and the Association and their respective agents, officers, directors, employees, servants, employees and contractors, from and against any and all liabilities, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for bodily injury, death property damage arising from the active or passive negligence of such Owner or Authorized Occupant, and their respective agents, employees, servants, and contractors acting within the scope of their employment.

13.3 Hazardous Substances. Each Owner agrees as follows with respect to its Parcel(s):

13.3.1 Care of Parcel. The Owner shall not use, produce, store, release, dispose or handle in or about its Parcel or transfer to or from its Parcel (or permit any other Person under its control or any Authorized Occupant to do such acts) any Hazardous Substance except in compliance with all applicable Environmental Laws. No Owner shall construct or use any improvements, fixtures or equipment or engage in any act on or about its Parcel that would require the procurement of any license or permit pursuant to any Environmental Law, except for (i) the routine use and sale of substances necessary to the use and occupancy of the Parcel; (ii) the pursuit of the Owner's or Authorized Occupant's legal business on the Parcel; and (iii) for the sale to the public of substances generally handled in businesses similar to the Owner's or Authorized Occupant's legal business, so long as the requisite licenses or permits are obtained and maintained.

13.3.2 Definitions. In this Declaration the term "Environmental Laws" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health,

industrial hygiene, or the environment, including without limitation the federal Comprehensive Environmental Response, Compensation, and Liability Act; and the term “**Hazardous Substance**” shall mean all substances, materials and wastes that are or become regulated or classified as hazardous or toxic, under any Environmental Law, including, but not limited to gasoline, diesel fuel, and petroleum products.

13.3.3 No Knowledge. To the best of the Owner’s knowledge after reasonable inquiry, each Owner represents and warrants the following to the other Owners with respect to its Parcel. These representations and warranties shall be effective first at the time the Owner acquires an interest in its Parcel and shall continue while the Owner holds an interest in its Parcel. If at any time these representations and warranties are inaccurate, the Owner shall immediately give written notice thereof to the other Owners and the Association. The representations and warranties are:

13.3.3.1 Except as permitted by Environmental Laws, there are no Hazardous Substances or regulated substances thereon or to be installed thereon, whether contained in barrels, tanks, equipment (movable or fixed) or other containers; deposited or located in land, waters, or sumps; or incorporated into any structure or in any other part of the Parcel.

13.3.3.2 No asbestos-containing materials have been or will be installed or affixed to the Buildings located or to be located on the Parcel at any time in violation of any Environmental Laws.

13.3.3.3 The Parcel and all uses thereon are not in violation of any Environmental Laws, whether they govern the existence, clean-up and/or remediation of contamination from any Hazardous Substance or regulated substances, and no governmental entity has served upon such Owner any notice claiming any violation of any such statute, ordinance or regulation.

13.3.4 Notification. If any Owner becomes aware of any condition relating to the existence, release or threatened release of any Hazardous Substance or violation of any Environmental Law on its Parcel, the cure or remediation of which is required by law or dictated by commercially reasonable business practices, such Owner shall promptly notify the other Owners, Tenant Agents and Association in writing thereof and shall promptly cure or remediate such condition.

13.3.5 Right to Cure. If any Defaulting Party fails to perform its duty to cure or remediate as required by Applicable Laws or this **Article 13**, a Non-defaulting Party may proceed to cure after thirty (30) days’ written notice and failure of the Defaulting Party to commence, and thereafter diligently to prosecute, such cure, and the Non-defaulting Party shall be entitled to a reimbursement of all costs incurred in effectuating such cure together with interest at the Default Rate from the date such costs were paid, plus Collection Costs. Furthermore, the Non-defaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party’s interest therein, as applicable) by filing a Notice of Lien in the Recorder’s Office for all such amounts. In case of an emergency, the Person becoming aware of the condition shall attempt reasonable efforts to notify the Person with the duty of cure of the condition requiring attention; however, any Person may in such emergency, without notice, proceed in good faith to effectuate a cure, giving such notice later as soon as possible.

13.3.6 Indemnity. The Owner of each Parcel agrees to indemnify, defend and hold harmless the other Owners, the Association, Manager and Authorized Occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, relating to or connected with any of the foregoing obligations and/or liabilities identified in this **Section 13.3**, for injury to or death of any Person or damage to or destruction of any property occurring on or originating from said Owner's Parcel or arising out of the act or omission of such Owner, its Authorized Occupants, unless caused by the negligent or willful acts or omissions of the otherwise indemnified Person, its agents, contractors or employees.

14. CONDEMNATION

If at any time or times all or any part of the Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Facilities in lieu of condemnation but under threat of condemnation shall be deemed to be a taking by eminent domain. All compensation, damages, and other proceeds from any such taking by power of eminent domain ("**Condemnation Award**") attributable to the value of any land and improvements within the Common Facilities shall be payable only to the Owner thereof (and its Authorized Occupants and assigns according to their respective interests therein) and no claim thereon shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Facilities so taken to the extent of any damage suffered by their respective Parcels (as intended and permitted hereunder if there is then no building thereon) resulting from severance of the appurtenant portions of the Common Facilities so taken. The Owner of the portions of the Common Facilities so condemned shall promptly repair and restore the remaining portion of the Common Facilities 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 Facilities so condemned less said Owner's costs associated with the condemnation, including but not limited to attorneys' fees and court costs arising out of the condemnation proceedings.

15. GENERAL PROVISIONS

15.1 Covenants Run With the Land. Each restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

15.2 Successors and Assigns. This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners and Tenant Agents as they exist from time to time, their respective heirs, personal representatives, successors, assigns, agents, employees, Authorized Occupants and the remaining Benefitted Parties, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise, to the extent that the foregoing is consistent with the provisions of **Article 10** of this Declaration. With respect to rights in or to any Parcel which have been severed from the rights or estates owned by Declarant pursuant to the terms of this Declaration, Declarant intends that such

rights remain severed notwithstanding that during any time in which this Declaration is in effect Declarant or any other Person may own the underlying estate or servient estate as well as the lesser right or dominant estate, respectively, so that Declarant's purposes in making this Declaration, as listed in the recitals, may be served, and any doctrine of merger of estates, or principle of law having similar effect, shall not apply to diminish any right hereunder or combine any right created or severed hereunder with any other estate or interest.

15.3 Duration. Except as otherwise provided herein, the term of this Declaration shall be for fifty (50) years and shall be thereafter automatically renewed for successive terms of ten (10) years each unless terminated by the filing of a Termination Notice executed by Owners and first mortgage Lien Holders owning or having first mortgage (including trust deed) liens upon, more than seventy-five percent (75%) of the Floor Area in the Shopping Center, which Termination Notice shall be recorded in the Recorder's Office at least one (1) year before the effective date of termination of the primary term or any renewal term.

15.4 Arbitration. As required by specific references within this Declaration to arbitration but otherwise only with the consent of the Persons affected thereby, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

15.5 Initiation of Litigation by Association. In addition to compliance with the dispute resolution procedures required in this Declaration, if applicable, the Association shall not initiate any judicial or administrative proceeding without the Consent of Owners, except that the Consent of Owners shall not be required for actions or proceedings:

15.5.1 initiated during the Declarant Control Period;

15.5.2 initiated to enforce the provisions of this Declaration, including collections of assessments and foreclosure of liens;

15.5.3 initiated to challenge ad valorem taxation of condemnation proceedings;

15.5.4 initiated against any contractor, vendor, or supplier of goods or services arising out of a contract between the Association and such contractor, vendor, or supplier for services or supplies; or

15.5.5 to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

15.6 Injunctive Relief. In the event of any violation or threatened violation by any Person of any of the Restrictions contained in this Declaration, Declarant (during the Declarant Control Period), the Association, or any of the Owners or Authorized Occupants of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

15.7 Modification. During the Declarant Control Period, Declarant or its successors or assigns has the right to modify or amend this Declaration at any time and from time to time so long as such modification does not materially and adversely impact the Grocery Store Owner, the Grocery Store Lot or the Grocery Store Lot Building. Thereafter, this Declaration may not be modified in any respect, in whole or in part, except with the approval of the Consenting Owners. No modification of the Declaration shall affect the rights of any first Lienholder unless the first Lienholder consents in writing to the modification. Notwithstanding any other provision hereof, this Declaration may not be modified in such a manner as would prohibit or restrict the use of a Parcel without the written consent of the Owner of the Parcel.

15.8 Termination. This Declaration may not be terminated except with the Consent of Consenting Owners and Tenant Agents. The termination of the Declaration shall not affect the rights of any first Lienholder unless the first Lienholder consents in writing to the termination.

15.9 Method of Approval. Whenever consent or approval is required under this Declaration, such consent or approval must be given in accordance with the particular provision requiring consent by the other Person or Persons from whom consent is required. The Person requesting approval or consent (the "**Requesting Person**") shall give notice in writing to the Person or Persons whose consent or approval is required (the "**Approving Person**"). Within thirty (30) days after receipt of said written request, each Approving Person shall notify the Requesting Person whether such consent or approval is granted. In the event that the Approving Person does not provide notification to the Requesting Person within thirty (30) days from the date of receipt of notice sent pursuant to **Section 15.11.1**, then the Approving Person shall be deemed to have granted consent or approval. Notwithstanding the above, this Section shall not be interpreted to permit a modification or termination of this Declaration without the express written consent of the Owners as provided in **Sections 15.7 & 15.8** and in such situation the failure to respond or notify any Requesting Person shall not be deemed an approval or consent thereto. Approval of any act, plan, budget, or any other item or fact under this Declaration shall not constitute a waiver of any requirements, duties, or obligations of any Person under this Declaration.

15.10 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or any Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.

15.11 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle the Association or any Owner or Authorized Occupant to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Association or Owner or Authorized Occupant may have hereunder by reason of any breach of this Declaration. Any breach of the Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

15.12 Notices.

15.12.1 Method of Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States

express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the Person and address designated below or, in the absence of such designation, to the Owner at its address shown on the then current real property records of the Recorder's Office, or to an Authorized Occupant, to the premises which are occupied:

Declarant:	EM Commercial Development, LLC Attn: William Gaskill 1754 E Cedar Trails Way Eagle Mountain, UT 84005
Master Declarant	Monte Vista Ranch, L.C. Attn: Tiffany Walden 1754 E Cedar Trails Way Eagle Mountain, UT 84005
Grocery Store Owner:	CJM Limited Liability Limited Partnership Attn: Mark Ridley 145 South Plummer Way Star, ID 83669

The Person and that Person's contact information to which notices are to be given may be changed at any time by the signing Person upon written notice to the other signing Persons. All notices given pursuant to this Declaration shall be deemed given upon receipt.

15.12.2 Receipt. For the purpose of this Declaration, the term "**receipt**" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to **Section 15.11.1** above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the Person specified pursuant to **Section 15.11.1** above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending Person.

15.13 Waiver. The failure of a Person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other Person.

15.14 Attorneys' Fees. In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs, expert fees, and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal).

15.15 Severability. If any term or provision of this Declaration or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this

Declaration or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

15.16 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners or other beneficiaries hereof.

15.17 Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person or entity not specifically mentioned herein (such as Owner, Declarant, etc.) unless otherwise expressly provided herein.

15.18 Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

15.19 Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

15.20 Joint and Several Obligations. If a Person bound by this Declaration (including, without limitation, an Owner or Authorized Occupant) is comprised of more than one Person, the obligations of those Persons shall be joint and several.


15.21 Recordation. This Declaration shall be recorded in the Recorder's Office.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURES FOLLOW ON NEXT PAGE]**


IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the date first set forth above.

**DECLARANT:
EM COMMERCIAL DEVELOPMENT, LLC,**

**By: Its Manager, Diamante Vista, L.L.C.,
a Utah limited liability company**

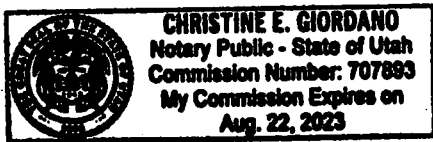
By: 
Name: Tiffany A. Walden
Its: Manager

**By: Its Manager, CP EM, LLC,
a Utah limited liability company**

By: 
Name: William G. Gaskill
Its: Manager

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

On this 19 day of July, 2021, personally appeared before me Tiffany A. Walden, the Manager of Diamante Vista, L.L.C., who being by me duly sworn, did say that they are the authorized agent of the Declarant authorized to execute this Declaration and did certify that this Declaration was approved by Declarant's members.

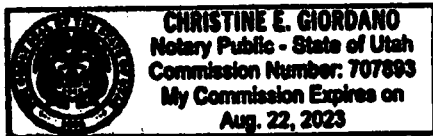


Christine E. Giordano

NOTARY PUBLIC

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

On this 19 day of July, 2021, personally appeared before me William G. Gaskill, the Manager of CP EM, LLC, who being by me duly sworn, did say that they are the authorized agent of the Declarant authorized to execute this Declaration and did certify that this Declaration was approved by Declarant's members.




Christine E. Giordano

NOTARY PUBLIC

IN WITNESS WHEREOF, the Master Declarant has caused this Declaration to be executed as of the date first set forth above.

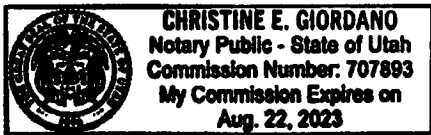
MASTER DECLARANT:
MONTE VISTA RANCH, L.C.
a Utah limited liability company

By: Its Manager, MVR MANAGEMENT, LLC
a Utah limited liability company

By: 
Name: Tiffany A. Walden
Its: Manager

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

On this 19 day of July, 2021, personally appeared before me Tiffany A. Walden the Manager of MVR Management LLC, the Manager of Monte Vista Ranch, L.C., who being by me duly sworn, did say that they are the authorized agent of the Master Declarant authorized to execute this Declaration and did certify that this Declaration was approved by Master Declarant's Board of Directors.




NOTARY PUBLIC

**OWNER CONSENT
TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND
EASEMENT OF MARKETPLACE AT EAGLE MOUNTAIN TOWN CENTER**

In witness whereof, the undersigned, as owner of a portion of the property described in **Schedule "A"** of this Declaration, hereby consents to the within and foregoing Declaration and the recording of such this 18th day of June 2021.

**OWNER:
JERRY L. RIDLEY**

By: *Jerry L. Ridley*

STATE OF Idaho)
)
:ss.
COUNTY OF Twin Falls)

The foregoing instrument was acknowledged before me this 18th day of June 2021, by Jerry Ridley, who is personally known to me or who has produced _____ as identification.

Kara Gosnell

Notary Signature

Kara Gosnell
Printed Name



SCHEDULE "A"**TO DECLARATION****(Legal Description of the Shopping Center)****PARCEL 1:**

A portion of the SE1/4 and SW1/4 of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian, Eagle Mountain City, Utah, more particularly described as follows:

Beginning on the westerly line of Sweetwater Road located N0°27'04"E along the Section line 1,333.00 feet to the Northeast Corner of the South 1/2 of the SE1/4 of Section 12 and S88°43'29"W along the 1\16th Section (40 acre) line 2,351.47 from the Southeast Corner of Section 12, T6S, R2W, S.L.B.& M.; thence S18°56'36"W along said westerly line of Sweetwater Road 729.56 feet to the northerly line of Eagle Mountain Boulevard; thence Northwesterly along said road and along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N18°57'04"E) 929.60 feet through a central angle of 5°21'04" (chord: N68°22'24"W 929.26 feet) to the southeast corner of that Real Property described as Deed Entry No. 72747:2000 of the Official Records of Utah County; thence along said deed the following 5 (five) courses and distances: N24°17'50"E 228.84 feet; thence Northwesterly along the arc of a 9,725.00 foot radius non-tangent curve (radius bears: N24°18'19"E) 83.78 feet through a central angle of 0°29'37" (chord: N65°26'53"W 83.78 feet) to a point of reverse curvature; thence along the arc of a 119.69 foot radius curve to the left 185.84 feet through a central angle of 88°57'51" (chord: S70°19'00"W 167.73 feet); thence S25°50'05"W 90.46 feet; thence along the arc of a 20.00 foot radius curve to the left 31.57 feet through a central angle of 90°27'15" (chord: S19°23'33"E 28.40 feet) to the north line of said Eagle Mountain Boulevard; thence Northwesterly along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N25°22'50"E) 507.95 feet through a central angle of 2°55'26" (chord: N63°09'27"W 507.90 feet) to the north line of the South 1/2 of the SW1/4 of said Section; thence N88°40'38"E along the 1/16th (40 acre) line 1,406.78 feet to the northwest corner of the South 1/2 of the SE1/4 of said Section; thence; thence N88°43'29"E along the 1/16th (40 acre) line 317.50 feet to the point of beginning.

PARCEL 2:

Commencing North 1243.99 feet and East 321.88 feet from the South 1/4 Corner of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence N18°55'24"E 28.66 feet; thence along the arc of a 1749.46 radius curve to the left (chord bears: N10°00'28"E 538.914 feet); thence N1°22'57"E 9.64 feet; thence N89°50'58"W 25.78 feet; thence S1°12'23"W 9.72 feet; thence along the arc of a 1750 foot radius curve to the right (chord bears: S2°27'33"W 76.53 feet) 76.54 feet; thence West 391.09 feet; thence North 251.34 feet; thence S89°57'53"W 1199.87 feet; thence South 101.6 feet; thence East 305.8 feet; thence South 306 feet; thence West 306 feet; thence North 407.6 feet; thence S89°57'53"W 189.01 feet; thence S1°21'47"W 752.08 feet; thence along the arc of a 9950.49 foot radius curve to the left (chord: S61°44'39"E 23.49 feet); thence N88°57'07"E 1703.74 feet to beginning.

TOGETHER WITH the following:

Commencing North 1746.91 feet and West 2271.8 feet from the Southeast Corner of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence West 391.09 feet; thence

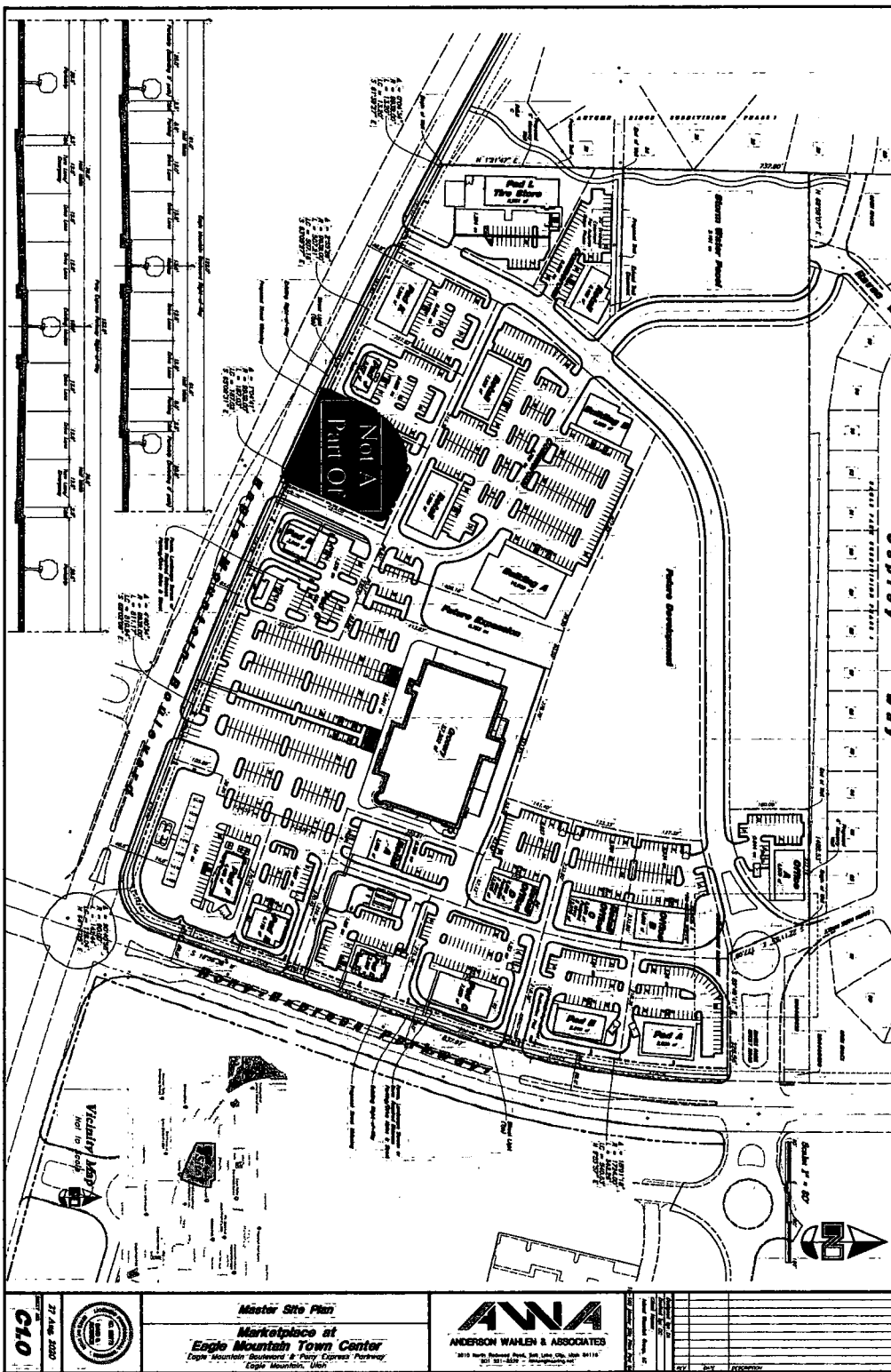
North 251.34 feet; thence N89°57'53"E 99.05 feet; thence S22°13'07"E 177.82 feet; thence S89°50'58"E 228.29 feet; thence S1°12'23"W 9.72 feet; thence along the arc of a 1750 foot radius curve to the right (chord bears: S2°27'33"W 76.53 feet) to the beginning.

LESS AND EXCEPTING the following:

A portion of the SE1/4 and SW1/4 of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian, Eagle Mountain City, Utah, more particularly described as follows:

Beginning on the westerly line of Sweetwater Road located N0°27'04"E along the Section line 1,333.00 feet to the Northeast Corner of the South 1/2 of the SE1/4 of Section 12 and S88°43'29"W along the 1/16th Section (40 acre) line 2,351.47 from the Southeast Corner of Section 12, T6S, R2W, S.L.B.& M.; thence S18°56'36"W along said westerly line of Sweetwater Road 729.56 feet to the northerly line of Eagle Mountain Boulevard; thence Northwesterly along said road and along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N18°57'04"E) 929.60 feet through a central angle of 5°21'04" (chord: N68°22'24"W 929.26 feet) to the southeast corner of that Real Property described as Deed Entry No. 72747:2000 of the Official Records of Utah County; thence along said deed the following 5 (five) courses and distances: N24°17'50"E 228.84 feet; thence Northwesterly along the arc of a 9,725.00 foot radius non-tangent curve (radius bears: N24°18'19"E) 83.78 feet through a central angle of 0°29'37" (chord: N65°26'53"W 83.78 feet) to a point of reverse curvature; thence along the arc of a 119.69 foot radius curve to the left 185.84 feet through a central angle of 88°57'51" (chord: S70°19'00"W 167.73 feet); thence S25°50'05"W 90.46 feet; thence along the arc of a 20.00 foot radius curve to the left 31.57 feet through a central angle of 90°27'15" (chord: S19°23'33"E 28.40 feet) to the north line of said Eagle Mountain Boulevard; thence Northwesterly along the arc of a 9,953.50 foot radius non-tangent curve (radius bears: N25°22'50"E) 507.95 feet through a central angle of 2°55'26" (chord: N63°09'27"W 507.90 feet) to the north line of the South 1/2 of the SW1/4 of said Section; thence N88°40'38"E along the 1/16th (40 acre) line 1,406.78 feet to the northwest corner of the South 1/2 of the SE1/4 of said Section; thence; thence N88°43'29"E along the 1/16th (40 acre) line 317.50 feet to the point of beginning.

SCHEDULE "B" TO DECLARATION (Site Plan of the Shopping Center)



SCHEDULE "C"
TO DECLARATION
(Floor Area Ceilings)

Plat	Parcel	Pad	Floor Area Ceiling
Future	TBD	Pad A	8,000 sq. ft.
Future	TBD	Pad B	8,000 sq. ft.
Future	TBD	Office A	12,000 sq. ft.
Future	TBD	Office B	12,000 sq. ft.
Future	TBD	Retail/Office C	12,000 sq. ft.
Phase 1	Lot 1	Pad G	5,000 sq. ft.
Phase 1	Lot 2	Grocery	60,000 sq. ft.
Phase 1	Lot 3	Pad F	8,000 sq. ft.
Phase 1	Lot 4	Pad E	5,000 sq. ft.
Phase 1	Lot 5	Pad D	8,000 sq. ft.
Phase 1	Lot 6	Pad C1	6,000 sq. ft.
Phase 1	Lot 7	Pad C2	5,000 sq. ft.
Phase 1	Lot 8	Retail A	5,000 sq. ft.
Phase 1	Lot 9	Retail/Office D	12,000 sq. ft.
Future	TBD	Pad J	3,000 sq. ft.
Future	TBD	Pad K	8,000 sq. ft.
Future	TBD	Pad L	10,000 sq. ft.
Future	TBD	Retail D	6,000 sq. ft.
Future	TBD	Retail C	8,000 sq. ft.
Future	TBD	Retail B	8,000 sq. ft.
Future	TBD	Building A	20,000 sq. ft.
Future	TBD	Building B	15,000 sq. ft.

SCHEDULE "D"
TO DECLARATION
(Shopping Center Signs Plan)

