

Recording Requested By
FIRST AMERICAN TITLE
National Commercial Services

AND

WHEN RECORDED RETURN TO:

Capstone Acquisitions, Inc.
1545 Faraday Avenue
Carlsbad, CA 92008
Attn: Alex Zikakis

14258331 B: 11501 P: 2183 Total Pages: 36
06/28/2024 12:48 PM By: adavis Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: FIRST AMERICAN TITLE NCS SAN DIEGO
9255 TOWNE CENTRE DRIVE, SUITESAN DIEGO, CA 92121

APN(s): See Exhibits A, B, and C

NCS-1193715-SD

(Space Above Line For Recorder's Use)

OPERATION AND RECIPROCAL EASEMENT DECLARATION

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS	2
1.1 Defined Terms	2
ARTICLE II. CREATION OF RECIPROCAL EASEMENTS	4
2.1 Confirmation of Reciprocal Easements	4
2.2 Reservation of Signage Easements	4
2.3 Recordation of Easements.....	4
2.4 Smith's REA and MACU Declaration.....	4
ARTICLE III. COVENANTS REGARDING PROJECT USE	5
3.1 Use Limitations.....	5
3.2 Limited Use Rights per Smith's REA.....	5
3.3 Project Signs	6
3.4 Building Improvements and Maintenance	6
3.5 Common Areas Lighting.....	7
ARTICLE IV. COMMON AREAS MAINTENANCE AND OPERATION	8
4.1 Operation and Maintenance By Operator	8
4.2 Common Areas Insurance.....	9
4.3 Third Person Contracts for Operation and Maintenance	10
4.4 Cost of Operation and Maintenance of Common Areas.....	10
4.5 Damage or Destruction To Common Areas.....	122
ARTICLE V. PARKING AREA REQUIREMENTS; COMMON AREAS ALTERATIONS....	12
5.1 Parking Ratio.....	12
ARTICLE VI. INDEMNIFICATION, INSURANCE AND DAMAGE AND DESTRUCTION	
12	
6.1 Smith's REA	12
6.2 Release	13
6.3 Requirements	144
ARTICLE VII. EMINENT DOMAIN.....	Error! Bookmark not defined.
ARTICLE VIII. RIGHTS UPON DEFAULT	14
8.1 Events of Default	14
8.2 Cure by Owners	155
8.3 Lien	155
8.4 Waivers	15
8.5 Remedies.....	166
8.6 Mortgagees.....	166
ARTICLE IX. EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES	16

9.1	No Termination.....	16
9.2	Mortgagee Protection.....	16
9.3	Subordination of Lien Claims.....	177
ARTICLE X. COVENANTS AND RECORDATION.....		177
10.1	Covenants Run With the Land.....	177
10.2	Recordation; Effective Date of Declaration.....	177
ARTICLE XI. MISCELLANEOUS.....		17
11.1	Negation of Partnership.....	17
11.2	No Third Party Beneficiary.....	188
11.3	Amendment and Termination.....	188
11.4	Force Majeure.....	188
11.5	Severability.....	188
11.6	Exhibits.....	188
11.7	Notices.....	188
11.8	Construction and Interpretation.....	199
11.9	Attorneys' Fees.....	199
11.10	Signature Pages.....	20
11.11	Time.....	20
11.12	Governing Law.....	20
11.13	Assignment.....	20

Exhibits

- Exhibit A - WDG Parcels
- Exhibit B - Daylight Parcels
- Exhibit C - DB Parcel
- Exhibit D - Site Plan
- Exhibit E - Signage Plan
- Exhibit F - Current Exclusives

OPERATION AND RECIPROCAL EASEMENT DECLARATION

THIS OPERATION AND RECIPROCAL EASEMENT DECLARATION (this “**Declaration**”) is made this 28th day of June, 2024, by and between WDG TRAIL CROSSING, LLC, a Utah limited liability company (“**WDG**”), RETAIL’S DAYLIGHT, LLC, a Delaware limited liability company (“**Daylight**”), and DB TRAIL CROSSING, LLC, a Delaware limited liability company (“**DB**”). WDG, Daylight, and DB are collectively referred to herein as the “**Parties**” and each individually as a “**Party**”.

RECITALS

This Declaration is entered into on the basis of the following facts, understandings and intentions:

A. WDG is the fee owner of those certain parcels of land described in Exhibit A attached hereto and incorporated herein by this reference (the “**WDG Parcels**”).

B. Daylight is the fee owner of those certain parcels of land described in Exhibit B attached hereto and incorporated herein by this reference (the “**Daylight Parcels**”).

C. DB is the fee owner of that certain parcel of land described in Exhibit C attached hereto and incorporated herein by this reference (the “**DB Parcel**”).

D. The Parcels (as defined in Section 1.1 below) are a part of a larger shopping center (the “**Shopping Center**”) (as long as WDG or its’ assignee is the Owner of any of the WDG Parcels) which is encumbered by that certain Restrictions and Easements Agreement recorded November 25, 2015, as Entry No. 12178028, in Book 10382, at Page 6541, in the office of the Salt Lake County Recorder (“**Recording Office**”), as amended by that certain First Amendment to Restrictions and Easements Agreement recorded May 3, 2018, as Entry No. 12765714, in Book 10671, at Page 1698, in the Recording Office, as further amended by that certain Second Amendment to Restrictions and Easements Agreement recorded April 5, 2022, as Entry No. 13926860, in Book 11325, at Page 5324, in the Recording Office, and as further amended by that certain Third Amendment to Restrictions and Easements Agreement recorded April 3, 2024, as Entry No. 14223868, in Book 11482, at Page 2388, in the Recording Office (collectively, the “**Smith’s REA**”), and as may be further amended from time to time. Certain terms not defined herein are defined in the Smith’s REA.

E. The Parcels are also subject to that certain Mutual Access, Maintenance and Easement Agreement, with Exclusive Use Restriction and the terms, conditions and limitations contained therein, recorded September 13, 2017 as Entry No. 12615235, in Book 10598, at Page 462 in the Recording Office (the “**MACU Declaration**”).

F. The Smith’s REA and the MACU Declaration each impose certain obligations and create certain rights with respect to the Parcels without allocating such obligations and rights between the Parcels.

G. The Parties each desire to enter into this Declaration for the purpose of allocating certain of the rights and obligations pursuant to the Smith’s REA and the MACU

Declaration and to set forth certain other provisions to help govern the use and operation of the Parcels.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and agreements contained herein, the Parties agree as follows:

ARTICLE I. DEFINITIONS

1.1 Defined Terms

As used in this Declaration, the following terms shall have the meanings set forth below:

Accounting Period: Each calendar year commencing January 1, except that the first Accounting Period shall begin as of the date of recordation of this Declaration and shall end on December 31 of the same year. If this Declaration terminates on a date other than December 31, the last Accounting Period shall end on such termination date.

Building Appurtenances: Truck docks, tunnels, ramps and wells, trash storage, drive-through lanes, outdoor sales areas servicing exclusively one (1) Occupant, outdoor seating areas servicing exclusively one (1) Occupant, outdoor play areas servicing exclusively one (1) Occupant, landscape areas between the closest curb and the adjacent building, gas station islands, pumps, air and water hoses and equipment and similar appurtenances used in connection with a gas station, car washes and appurtenances used in connection with a car wash, and supports and appurtenances that extend from a building as permitted by this Declaration, such as building canopies, support columns, pilasters, overhangs and footings, provided that such improvements are located immediately adjacent to a building or other Building Appurtenance.

Common Areas: Those portions of the Project which are considered Common Areas as defined in Section 1(b) of the Smith's REA.

Common Areas Maintenance Costs: The total of all monies which Operator incurs for reasonable costs and expenses for the operation, insuring, maintenance and repair of the Common Areas in fulfillment of the requirements of ARTICLE IV, together with the Maintenance Fee.

Floor Area: With respect to each building, the total square feet of floor area contained within the boundaries of the exterior surfaces of the exterior walls; but excluding any mezzanine, basement space, decorative facades, fascia or architectural treatments, overhangs such as canopies, exterior loading docks, exterior delivery areas, exterior trash enclosures or pallet areas and exterior utility rooms, and vestibules for ingress and egress, provided that in all of the foregoing cases, such areas are not used for the sale or storage of retail goods or services.

Maintenance Fee: A fee equal to ten percent (10%) of the total costs incurred by Operator for the operation, insuring, maintenance and repair of the Common Areas in fulfillment of the requirements of ARTICLE IV.

Occupant: Any Person from time to time entitled to the use and occupancy of any portion of a Parcel under an ownership right or any lease, sublease, license, concession or other similar agreement.

Operator: Subject to change pursuant to Section 4.1, Daylight (as long as Daylight owns a fee interest in any portion of the Project) or any other Person designated by Daylight to operate and maintain the Common Areas.

Owner: The recordholder of fee simple title to any portion of the Project. The term "**Owner**" shall also include any Occupant under a lease designated by the applicable Owner to act on behalf of such Owner in the exercise of the rights or powers granted to such Owner under this Declaration; so long as such designation remains in effect, such designee shall be deemed an Owner hereunder with respect to the designated Owner's Parcel and the rights or powers so granted, except as may otherwise be set forth herein; provided, however, that (i) in order to be effective any such designation must be in writing, executed by such Owner and its designee and served upon the other Owners in the manner provided for notices hereunder, and (ii) no such designation shall relieve the designating Owner of liability for the obligations imposed on such Owner under this Declaration. There shall not be more than one (1) Person exercising the rights of an Owner with respect to any individual Parcel at any time.

Parcel: Each of the WDG Parcels, Daylight Parcels, and DB Parcel as the same may be revised from time to time by recordation of an amended parcel map, lot line adjustment or otherwise. In the event any Parcel shall be subdivided, each new lot or parcel shall be considered a Parcel under this Declaration.

Permittees: All Persons granted permission to utilize the Common Areas, including Owners, Occupants, employees, service persons, licensees, invitees, customers, contractors and agents.

Person: An individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal, or any other form of business or legal entity.

Project: Collectively, the WDG Parcels Daylight Parcels, and DB Parcel, as the same may be revised from time to time by recordation of an amended parcel map, lot line adjustment or otherwise subdivided or revised from time to time.

Proportionate Share: With respect to each Parcel, a fraction, the numerator of which is the greater of the aggregate square feet of Floor Area contemplated for the specific Parcel as designated on the Site Plan or the actual aggregate square feet of Floor Area within the specific Parcel, and the denominator of which is the aggregate square feet of Floor Area in the Project (provided that, in computing the aggregate square feet of Floor Area in the Project, no Parcel shall be deemed to have an amount of aggregate square feet of Floor Area less than the aggregate square feet of Floor Area contemplated for the specific Parcel as designated on the Site Plan, irrespective of whether such Floor Area has been constructed).

Site Plan: The Site Plan attached hereto as Exhibit D showing the location of, and designating, among other items, the Parcels, Project Signage, and permissible Floor Area.

**ARTICLE II.
CREATION OF RECIPROCAL EASEMENTS**

2.1 Confirmation of Reciprocal Easements

The Parties hereby confirm that all of the easements created pursuant to the Smith's REA and the MACU Declaration for the benefit of the Developer Lots shall run for the benefit of each of the legal lots comprising the Parcels, as the same may exist from time to time.

2.2 Reservation of Signage Easements

Each of the Parties hereby reserves to itself, together with the right of those Parties, respectively, to grant and transfer the same, for the use and benefit of those Parties and each of their Permittees, a non-exclusive, irrevocable easement in, to, over, and across the Common Areas for the installation, operation, maintenance and repair of all Project identification signage and multi-tenant signage located within the areas depicted as "**Signage**" on the Site Plan. It is the intent of the foregoing that Operator will be responsible for the operation, maintenance and repair of the sign structures, while each Owner which installs (or whose Permittee installs) its sign facia on any sign structure will be responsible, at its sole cost, for the installation, maintenance and repair of its sign fascia and sign can within such sign structure.

2.3 Recordation of Easements

Although the easements created by this ARTICLE ARTICLE II are self operating, all Owners hereby agree, if requested by an Owner whose Parcel is benefitted, to execute additional documents in recordable form that are reasonably necessary to effectuate the provisions of this ARTICLE ARTICLE II, including, but not by way of limitation, grants of easements, licenses, and similar rights to utility companies and governmental bodies or agencies to facilitate the operation and improvement of the Project.

2.4 Smith's REA and MACU Declaration

Notwithstanding anything to the contrary contained in this Declaration, and by way of clarification, the Project shall continue to be subject to the Smith's REA and the MACU Declaration, and this Declaration is only intended to further define the rights and obligations of the Owners and the manner in which certain matters set forth in the Smith's REA and the MACU Declaration are to be allocated between the Owners. As long as there is an Operator under this Declaration, all payments to be received pursuant to the MACU Declaration shall be paid to Operator and shall be used to offset Common Areas Maintenance Costs. During any period for which there is not an Operator under this Declaration, all payments to be received pursuant to the MACU Declaration shall be paid equally to the Owners of Lots C-106 and C-108. Each Owner shall sign any document requested by Operator to evidence such Owner's agreement to the two (2) immediately preceding sentences.

**ARTICLE III.
COVENANTS REGARDING PROJECT USE**

3.1 Use Limitations

The Parties hereto acknowledge that certain exclusives and restrictions have previously been agreed to with tenants of the Project. In order to assure that such exclusives and restrictions remain binding on the Project, the Parties agree to the following use provisions:

(a) The Parties shall not violate the existing exclusives set forth on Exhibit F attached hereto and incorporated herein by this reference.

(b) In the event of a violation of any of the foregoing provisions of this Section 3.1 (and notwithstanding anything contained in ARTICLE ARTICLE VIII below to the contrary), the Owner and/or Occupant in whose favor (or in whose Parcel's favor) such provision runs shall have the right to pursue any and all remedies available at law or in equity, including, without limitation, all damages accruing under the applicable lease as the result of such violation.

3.2 Limited Use Rights per Smith's REA

(a) The use restrictions and limitations set forth in Section 2 of the Smith's REA shall apply to each Owner and its Permittees, and any violation thereof pursuant to the Smith's REA shall be deemed to be a default under this Declaration. In addition, before any consent or approval given by Developer or Smith's pursuant to the Smith's REA can become effective, the Owners who own Floor Area comprising at least two-thirds (2/3) of the total Proportionate Shares within the Project must also consent to the matter for which such consent or approval applies.

(b) Section 2(a) of the Smith's REA permits exceptions with respect to the general use restrictions for a limited number of specialty health spa, fitness gym and climbing gym (subject to other limitations). As between the WDG Parcels and the Daylight Parcels, whichever Owner of any such Parcel first gives notice to WDG (if the Owner of one of the Daylight Parcels is giving such notice) or to Daylight (if the Owner of one of the WDG Parcels is giving such notice) that either (i) a lease has been entered into for the use of such Parcel for the restricted purpose, or (ii) that a construction contract has been entered into for the construction of a building on such Parcel for the restricted purpose, shall have the right to such use. The foregoing shall apply until no more uses of such type are permitted under the Smith's REA. However, after any such notice is given, if (x) a business for the specific use is not opened and operating from the applicable Parcel within twelve (12) months after the giving of such notice, or (y) after opening for business for the specific use, such Parcel is no longer used for the specific use for twelve (12) or more consecutive months (excluding any period during which such Parcel is not so used due to a casualty or remodel and providing that the Owner or Occupant thereof diligently pursues the reopening for business for such specific use thereafter and provided that in no event shall such operations not occur for a period in excess of ninety (90) days in total as a result of a remodel), then the provisions of the second sentence in this paragraph shall again be applicable.

(c) Section 2(d) of the Smith's REA permits one (1) State Liquor Store. As between the WDG Parcels and the Daylight Parcels, whichever Owner of any such Parcel first gives notice to WDG (if the Owner of one of the Daylight Parcels is giving such notice) or to Daylight (if the Owner of one of the WDG Parcels is giving such notice) that either (i) a lease has been entered into for the use of such Parcel for the restricted purpose, or (ii) that a construction contract has been entered into for the construction of a building on such Parcel for the restricted purpose, shall have the right to such use. The foregoing shall apply until no more uses of such type are permitted under the Smith's REA. However, after any such notice is given, if (x) a business for the specific use is not opened and operating from the applicable Parcel within twelve (12) months after the giving of such notice, or (y) after opening for business for the specific use, such Parcel is no longer used for the specific use for twelve (12) or more consecutive months (excluding any period during which such Parcel is not so used due to a casualty or remodel and providing that the Owner or Occupant thereof diligently pursues the reopening for business for such specific use thereafter and provided that in no event shall such operations not occur for a period in excess of ninety (90) days in total as a result of a remodel), then the provisions of the second sentence in this paragraph shall again be applicable.

3.3 Project Signs

The Smith's REA allocates the designation of the Shopping Center name, the designation of the trade name of the operator of the Smith's Building, the designation of the Smith's Fuel Center (as long as such Smith's Fuel Center is open and operating within the Shopping Center), and the designation of the trade name of up to eleven (11) additional tenants of Developer Lots located within the shopping center from time to time. The remaining fascia spaces on each sign, as designated on Exhibit E attached hereto and incorporated herein by this reference (the "**Signage Plan**"), shall be allocated to the fee owner of each Lot (or its' designee) as set forth on the Signage Plan. All signs shall comply with the requirements of Section 5 of the Smith's REA. The Owner of each Parcel upon which the signs designated on the Signage Plan as Monument Signs shall have the exclusive right to use the Monument Sign located on such Owner's Parcel.

3.4 Building Improvements and Maintenance

(a) Maintenance. After completion of construction, each Owner covenants and agrees to maintain and keep the building improvements and Building Appurtenances (hereinafter, "**Building Improvements**"), if any, located on its Parcel in a first class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction over the same, and in compliance with the provisions of this Declaration, including the architectural theme. Each Owner further agrees to store all trash and garbage in adequate containers and to arrange for regular removal of such trash or garbage so as to prevent objectionable odors, overflow of trash and the attracting of rodents. In addition, each Owner shall sweep and otherwise keep clean, to the extent reasonably necessary, on a daily basis, the sidewalks adjacent to such Owner's building.

(b) Casualties. In the event any of the Building Improvements are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such Building Improvements are located shall promptly remove the debris resulting from such event, remove

any hazardous condition and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building Improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, (ii) erect other Building Improvements in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion and/or the balance of such Building Improvements and restore the cleared area to either a hard surface condition or a landscaped condition. Such Owner shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one of such alternatives. Such Owner shall give notice to the other Owners within ninety (90) days from the date of such casualty of which alternative it elects.

(c) Property Insurance. In addition to other insurance policies required by this Declaration and/or the Smith's REA, each Owner agrees to provide and maintain at all times policies of property insurance on all buildings, Building Appurtenances and Common Areas on such Owner's Parcel in an amount not less than eighty percent (80%) of the full replacement cost thereof based upon insurance coverage by reasonable and prudent owners of like property in the South Jordan, Utah metropolitan area. All such insurance shall be issued by a company authorized to do business in the State of Utah having a rating in the then most current edition of Best's Key Rating Guide of A/X or better, and must be primary to any insurance carried by Operator. Any such insurance shall also include a waiver of subrogation provision or endorsement in favor of Operator and Operator's insurer. The insurance required pursuant to this paragraph shall provide that the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insurer to each insured and to Operator.

(d) Towers, Dishes and Satellites. Notwithstanding anything to the contrary contained herein, there shall not be installed anywhere within the Project any cell tower without the prior written consent of Daylight (or if Daylight no longer owns a fee interest in any portion of the Project, then Operator), which consent may be withheld in the sole and absolute discretion of Daylight (or Operator, if applicable). Additionally, no satellite dishes shall be installed within any portion of the Project, without the prior written consent of Daylight (or if Daylight no longer owns a fee interest in any portion of the Project, then Operator), except that satellite dishes may be installed on the roof of a building provided that such satellite dish is used only in connection with the operation of the business conducted in such building and is screened in a manner reasonably satisfactory to Daylight (or if Daylight no longer owns a fee interest in any portion of the Project, then Operator).

3.5 Common Areas Lighting

Lighting for the Common Areas shall remain on each day during such hours as determined by Operator. Common Areas security lighting as designated by Operator shall remain on each day during hours of darkness for security purposes. No change shall be made in Common Areas lighting without in each instance obtaining the prior approval of Operator; provided, however, if any applicable law, rule, statute or ordinance then in effect restricts the hours or amount of lighting, then the standard prescribed by such restriction shall be adhered to while in effect. If "special" lighting (other than lighting for Project security) is required by any Occupant on any Parcel, or if regular lighting is required by any Occupant on any Parcel after

such time as Common Areas lighting remains on as set forth above, then the electricity to service such lighting requirements shall be separately metered and all expenses thereof shall be paid by such Occupant, or if such separate metering is not reasonably feasible, then such cost shall be determined on a prorated basis in accordance with such usage and all such pro-rated expenses shall be so paid by such Occupant. Daylight or Operator may, in Daylight's or Operator's sole discretion, separately meter electrical service relating to Common Areas lighting for any Parcel in which event the Owner of the separately metered Parcel shall pay for all electricity costs for Common Areas lighting incurred in connection with such Owner's Parcel and none of such cost shall be included as a Common Areas Maintenance Cost and such Owner shall not be required to pay for any share of electrical service for Common Areas lighting. The cost of electrical service for Common Areas lighting for the Parcels which are not separately metered shall be a Common Areas Maintenance Cost which shall be allocated among all Owners whose Parcels are not separately metered and charged based upon the relevant Proportionate Shares of such Owners.

ARTICLE IV. COMMON AREAS MAINTENANCE AND OPERATION

4.1 Operation and Maintenance By Operator

Commencing upon the date of recordation of this Declaration, notwithstanding that the Smith's REA contemplates that each Owner will self-maintain the Common Areas on such Owner's Parcel, Operator shall operate and maintain the portions of the Common Areas located within the Project in accordance with the operation and maintenance standards set forth in the Smith's REA, but which shall also expressly include maintenance of parking fields, sidewalks (except the sweeping of sidewalks immediately adjacent to an Owner's building, which is governed by Section 3.4(a) above), drives aisles, lighting (not including lighting attached to an Owner's building), main utility lines (each Owner shall be responsible from the point of connection from main distribution lines to buildings), janitorial cleaning and sweeping within the Common Areas (except the sweeping of sidewalks immediately adjacent to an Owner's building, which is governed by Section 3.4(a) above), landscaping (except landscaping adjacent to/surrounding individual buildings), and security if implemented for all Owner Parcels. Daylight shall be the initial Operator. An Operator shall have the right to resign at any time by giving the Owners not less than thirty (30) days prior written notice of such resignation. In such event, Daylight (or if Daylight no longer owns a fee interest in any portion of the Daylight Parcels, then the Owners, by agreement of the Owners owning greater than fifty percent (50%) of the Proportionate Shares) shall appoint a new Operator to assume the existing Operator's duties effective as of the date of resignation. Upon resignation, the prior Operator shall be relieved from any liability due to acts or omissions of the new Operator. If, for any reason, there is no Operator at any time, each Owner shall maintain the Common Areas on its Parcel in the manner provided by the Smith's REA during such period as there is no Operator. Notwithstanding the foregoing, (i) if an Owner or Occupant installs or adds improvements to a Parcel in excess of that normal and consistent with the remainder of the Parcels, the maintenance and cost thereof shall be borne solely by such Occupant and shall not be included in Common Areas Maintenance Costs and (ii) if an Owner or Occupant requests the right to maintain the landscaping or Common Areas improvements adjacent to its building and Operator approves of such maintenance (which approval may not be unreasonably withheld), the maintenance and cost of such matters shall be borne solely by such Occupant and shall not be included in Common

Areas Maintenance Costs. In addition to the above, such Common Areas operation and maintenance shall include:

(a) Project Signs. Maintaining, operating, repairing and replacing any and all pylon signs in the Common Areas which are multi-tenant signs advertising the names of Occupants of the Project, including Pylon Signs A1 and A2, except that any Party (and/or its' tenants) listed on any such signs shall be responsible for the cost of maintaining, repairing and replacing their sign nameplates. All costs (including, without limitation, the costs of providing power and the cost of insurance) expended for such purpose (including an administrative fee of ten percent (10%) of the aggregate of all of such costs) shall be separately billed to each party which has been given the right to install a sign fascia on any such pylon sign. Each such party shall reimburse Operator within fifteen (15) days after receiving an invoice therefor in the amount determined by multiplying the total amount of such costs incurred by Operator (after deducting any amounts paid by any owner of any portion of the Shopping Center not included within the Project) with respect to each such pylon sign during the applicable billing period times a fraction (i) the numerator of which is the surface area of sign fascia/panels allocated to such party on such pylon sign, and (ii) the denominator of which is the total surface area of sign fascia/panels on such pylon sign allocated to all of the Parties (or their assignees) pursuant to this Declaration (excluding any Project identification sign fascia/panels). Each such party shall pay its pro rata amount regardless of whether its sign fascia/panel is being used during such billing period. As provided in Section 2.2 above, each displaying party on any such pylon sign shall supply and maintain its own sign fascia/panel and sign can at its sole cost and expense. Notwithstanding the foregoing, if any sign includes Project identification, but does not include identification of any particular Occupant, then the costs incurred in maintaining such sign shall be a portion of the Common Areas Maintenance Costs.

(b) Insurance. Maintaining Common Areas liability insurance as required by Section 4.2 below.

Notwithstanding the foregoing, each Owner shall remain solely responsible for the payment of all utility costs, property and liability insurance costs with respect to such Owner's Parcel, and each Owner shall also remain solely responsible for the payment of all real property taxes and assessments levied on such Owner's Parcel as contemplated by Section 4(c) of the Smith's REA.

4.2 Common Areas Insurance

(a) Commencing upon the recordation of this Declaration, Operator shall maintain with an insurance company or companies, licensed to do business in the State of Utah, commercial general liability insurance on the Common Areas within the Project insuring against bodily injury, property damage and personal injury arising out of any duties of Operator on the Common Areas within the Project, with a combined single liability limit as determined appropriate by Operator in its sole discretion from time to time. The costs incurred in maintaining such insurance shall be included in Common Areas Maintenance Costs. Such insurance shall be secondary to any liability insurance carried by an Owner, all as contemplated by Section 6.1 below.

(b) Commencing upon the recordation of this Declaration, Operator may, at its option, maintain with an insurance company or companies, licensed to do business in the State of Utah, property insurance coverage for the Common Areas (including any multi-tenant pylon signs) being maintained by Operator. The proceeds of any property insurance maintained by Operator payable in the event of a loss will be payable to Operator and used solely to restore, replace, reconstruct and rebuild the insured property. The costs incurred in maintaining such insurance shall be included in Common Areas Maintenance Costs. Such insurance shall be secondary to any liability insurance carried by an Owner.

4.3 Third Person Contracts for Operation and Maintenance

Operator may contract with a third Person or Persons (including an affiliated entity) to provide for performance of all or part of the duties and obligations of Operator under this ARTICLE ARTICLE IV. The amounts paid under such contracts shall be included in Common Areas Maintenance Costs to the same extent such costs would have been included if performed by Operator. If Operator enters into any contract with an affiliated entity, such contract shall be on terms reasonably competitive with those available from unaffiliated entities.

4.4 Cost of Operation and Maintenance of Common Areas

(a) Budget. Operator shall, at least thirty (30) days prior to each Accounting Period, prepare and furnish to the Owners an estimated budget of costs of Common Areas Maintenance Costs (including the Maintenance Fee) for such Accounting Period; provided that the first such estimated budget shall be prepared and furnished within thirty (30) days after the recordation of this Declaration and shall apply for the first Accounting Period.

(b) Payment of Proportionate Share. Each Owner shall, on the first day of each month of each Accounting Period, pay to Operator one-twelfth (1/12th) (or, if the first year Accounting Period is less than a full calendar year, then based upon a fraction, the numerator of which is one (1) and the denominator of which is the number of months in such partial year during which such first Accounting Period occurs) of its Proportionate Share of the amount of such annual budget for such Accounting Period. If Operator has failed to timely submit an annual budget when required as set forth in Section 4.4(a) above, then the annual budget for the immediately preceding Accounting Period shall remain in effect until such new annual budget is submitted. Operator shall, within one hundred twenty (120) days after the end of each Accounting Period, submit to each Owner for which such Accounting Period was in effect a statement setting forth (i) an itemization of all Common Areas Maintenance Costs incurred by Operator for such Accounting Period; and (ii) the total amount of Common Areas Maintenance Costs paid by the recipient Owner during such Accounting Period, setting forth any amounts or credits due from or to such Owner. If the Proportionate Share of Common Areas Maintenance Costs paid by an Owner for the Accounting Period to which the statement applies is less than that shown due by the statement, that Owner shall, within ten (10) days after receipt of the statement, pay the difference due Operator as shown on such statement. If the Proportionate Share of Common Areas Maintenance Costs paid by an Owner for the Accounting Period to which the statement applies is greater than that shown to be due by the statement, Operator shall, at Operator's option, either credit such excess to Common Areas Maintenance Costs next coming due from such Owner or pay the excess amount with the statement submitted to such Owner. If

Operator incurs emergency costs and expenses, Operator may submit to the Owners a statement setting forth an itemization of such emergency Common Areas Maintenance Costs incurred. Within thirty (30) days of receipt of such a statement, each Owner shall pay to Operator such Owner's Proportionate Share of such emergency costs and expenses. If Operator reasonably determines during any Accounting Period that Operator's estimated budget of costs of Common Areas Maintenance Costs is inaccurate, Operator may adjust the monthly payments to be made by each Owner during the remainder of such Accounting Period by giving written notice of such adjustment (together with a revised budget) to each Owner, and each Owner shall, commencing as of the first day of the month which is at least ten (10) business days after the giving of such notice, thereafter make monthly payments based upon such adjustment.

(c) Books and Records. Operator shall keep complete and accurate books and records of each and every item of cost or expense paid or incurred for the operation and maintenance of the Common Areas under this ARTICLE ARTICLE IV. Operator shall make such books and records available at all times during normal business hours after reasonable notice for inspection, review and copying by each Owner and its designated representatives, including accountants and attorneys. Each Owner shall also have the right, at its sole cost, to audit such books and records once in each year; provided that any such audit must be made by an independent certified public accountant, using generally accepted accounting practices, within six (6) months after the delivery to the Owner of the statement contemplated by the second sentence of subparagraph (b) above and no such audit shall be performed on a contingency basis. Notwithstanding the foregoing, if Operator objects to the results of such audit, then the Owners who are involved in such audit and Operator shall use good faith efforts to resolve any issue within thirty (30) days of demand by any such party. If any such issue is not resolved within such thirty (30) day period, then, within ten (10) days thereafter, the Owners who are involved in such audit shall give Operator their final position (using a precise dollar amount), and Operator shall give the Owners who are involved in such audit its final position (using a precise dollar amount), as to the correct amount with respect to all of the disputed items in the aggregate. If either the Owners who are involved in such audit or Operator fail to timely give notice to the other of their final position, then the decision of the other party shall control. If both the Owners who are involved in such audit and Operator timely give notice to the other of their final position, then the Owners who are involved in such audit shall jointly name one independent certified public accountant and Operator shall name a second independent certified public accountant, with the two independent certified public accountants jointly naming a third independent certified public accountant to conduct an audit of such books and records. The final position set forth by the parties which is closest to the results determined by such third public accountant shall be controlling. Whichever of the Owners who are involved in such audit or the Operator whose final position is the furthest from the results determined by such third party accountant shall reimburse the other party for all costs of the accountant appointed by such other party and shall also pay all costs of the accountant appointed by the non-prevailing party and all costs of the third accountant. Operator shall promptly repay the actual amount of any overpayment and the Owners shall promptly make such payments as may be necessary to reflect the correct Proportionate Share of each Owner. Operator shall keep and maintain all such books and records for a period of at least one (1) year from the end of the Accounting Period to which they apply.

4.5 Damage or Destruction To Common Areas

Notwithstanding anything to the contrary contained in this Declaration, upon any damage or destruction to the Common Areas of the Project during the term of this Declaration from any casualty, the Owner upon whose Parcel such damage or destruction occurs shall, promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Areas, at its sole cost, to substantially the same condition as such portions of the Common Areas were in prior to such casualty (but with new materials at least of the same quality). If any such Owner fails to promptly perform such restoration, repair or rebuilding, Operator may, at its option, give such Owner written notice of such failure. If such Owner fails to commence the required performance within ten (10) days from the date of such notice or thereafter fails to diligently prosecute such performance to completion within thirty (30) days from the date of such notice, Operator shall be entitled, but not obligated, to enter upon such Parcel and perform such restoration, repair and rebuilding, all at such Owner's sole cost (except to the extent of insurance proceeds actually received by Operator as a result thereof).

ARTICLE V. PARKING AREA REQUIREMENTS; COMMON AREAS ALTERATIONS

5.1 Parking Ratio

The Parties agree that (a) all parking on or within the WDG Parcels, Daylight Parcels, and DB Parcel shall be subject to and in accordance with the requirements and ratios set forth in the Smith's REA; and (b) no Party shall permit any actions to be taken which would affect the allocations of parking spaces as set forth in the Smith's REA, except in accordance with the terms of such Smith's REA. Notwithstanding anything in this Agreement or the Smith's REA to the contrary, the Parties agree that WDG, Daylight, DB and their respective guests, customers, employees, and invitees may cross-park within the Project.

5.2 Alterations

Unless the prior written consent of Operator is obtained, no Owner shall alter or permit to be altered the size or configuration of parking spaces or other Common Areas improvements on its Parcel. Operator shall have the right to change the Common Areas, subject to the prior written consent of the Owner of the Parcel upon which such change is contemplated to be made.

ARTICLE VI. INDEMNIFICATION, INSURANCE AND DAMAGE AND DESTRUCTION

6.1 Smith's REA

Each Owner (as to its Parcel only) shall comply with the indemnity and insurance requirements set forth in Section 6 of the Smith's REA as if each Owner was a party to the Smith's REA. In addition, each Owner shall cause the commercial general liability insurance required by the Smith's REA to also name Operator as an additional insured, and to provide that such insurance is primary, and that any insurance carried by Operator (as contemplated by

Section 4.2 above) shall be secondary. Any such insurance shall also include a waiver of subrogation provision or endorsement in favor of Operator and Operator's insurer. Without limiting the foregoing, each Owner agrees to indemnify, defend and hold harmless Operator and Operator's agents, employees, directors, officers, partners and contractors and all other Owners within the Project, and their respective Permittees, for, from and against any and all claims and all costs, expenses and liabilities (including reasonable attorneys' fees and costs) incurred in connection with any claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage whatsoever to any Person, or to the property of any Person, proximately caused by the acts or omissions of such Owner or its Permittees and occurring on such Owner's Parcel, except to the extent caused by the negligence or intentional misconduct in whole or in part of an indemnified party. Each Owner having rights with respect to an easement granted hereunder or under the Smith's REA agrees to indemnify, defend and hold harmless Operator and Operator's agents, employees, directors, officers, partners, affiliates and contractors and the Owner whose Parcel is subject to the easement for, from and against any and all claims and all costs, expenses and liabilities (including reasonable attorneys' fees and costs) incurred in connection with any claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage whatsoever to any Person, or to the property of any Person, proximately caused by the acts or omissions of such Owner or its Permittees in the use of any such easement granted hereunder or under the Smith's REA, except to the extent caused by the negligence or intentional misconduct in whole or in part of the indemnified party whose Parcel is subject to the easement or its Permittees.

6.2 Release

Each Owner and Operator (the "**Releasing Party**") hereby releases and waives for itself, and each Person claiming by, through or under it (including, without limitation, its insurance carrier, whether by means of assignment, subrogation or otherwise), each other Owner and, in the case of each Owner's release, Operator (the "**Released Party**") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Project, which loss or damage is of the type generally covered by the insurance required to be maintained under Section 4.2 above or this ARTICLE ARTICLE VI, irrespective of any negligence on the part of the Released Party which may have contributed to or caused such loss; provided that such release shall only be to the extent of the amount of such insurance actually carried under Section 2.4 above or this ARTICLE ARTICLE VI or actually carried by the Releasing Party, whichever is greater. Each Owner agrees to use its commercially reasonable efforts to obtain appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Owner ("**Indemnitor**") covenants and agrees to indemnify, defend and hold harmless each other Owner, Operator, their respective members, directors, officers, partners, agents, representatives and employees ("**Indemnitee**") from and against all claims asserted by or through any Occupant, representative, employee, contractor or agent of the Indemnitor or of the Occupant of the Indemnitor's Parcel (collectively, the "**Asserting Party**") for any loss or damage to the property of such Asserting Party located upon the respective Indemnitor's Parcel, irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss; provided, that such covenant to indemnify, defend and hold harmless shall only be to the extent of the amount of insurance which covers such loss or

damage and which is required to be maintained under this ARTICLE ARTICLE VI or which is actually carried by the Indemnitor, whichever is greater. Without limiting the foregoing, neither Operator nor its agents, employees, directors, officers, partners or contractors are liable to any Owner or such Owner's Permittees for any mistakes or errors in judgment or for any other act or omission under this Declaration if the same is not fraudulent, grossly negligent or in bad faith, and each Owner, on its own behalf and on behalf of its Permittees, expressly waives, releases, discharges and relinquishes any and all claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees and costs) against Operator and its agents, employees, directors, officers, partners and contractors on account thereof.

6.3 Requirements

The insurance required pursuant to Section 6.1 above shall (i) provide that the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured; (ii) provide for severability of interests; (iii) provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and (iv) provide for contractual liability coverage with respect to the indemnity obligation set forth herein. All such insurance shall be issued by a company authorized to do business in the State of Utah having a rating in the then most current edition of Best's Key Rating Guide of A/X or better, and must be primary to any insurance carried by Operator. Any such insurance shall also include a waiver of subrogation provision or endorsement in favor of Operator and Operator's insurer.

ARTICLE VII. EMINENT DOMAIN

The provisions of Section 7 of the Smith's REA shall apply as if each Owner was a party to the Smith's REA.

ARTICLE VIII. RIGHTS UPON DEFAULT

8.1 Events of Default

The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Owner (the "**Defaulting Party**"):

(a) The failure to make any payment required to be made hereunder within ten (10) days of the due date, or

(b) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Owner or Operator (the "**Non-Defaulting Party**") specifying the nature of the default claimed, or if longer than thirty (30) days is reasonably required to cure such covenant, condition or obligation, then such longer period as is reasonably necessary as

long as the Defaulting Party has commenced such cure within thirty (30) days after the issuance of such notice and diligently pursues such cure to completion.

8.2 Cure by Owners

With respect to any default under Section 8.1(b) above, Operator or any Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, Operator or any Owner, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, Operator or the curing Owner shall have the right to enter upon the Parcel of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Owner shall be responsible for the default of its Occupants. In the event Operator or any Owner shall cure a default, the Defaulting Party shall reimburse Operator or the curing Owner for all costs and expenses incurred in connection with such curative action, plus interest at the prime rate then being charged by Bank of America (or if Bank of America no longer exists, then by the bank with the largest amount of deposits in Salt Lake City, Utah) plus five percent (5%), but in no event in excess of the maximum permissible amount under applicable usury laws, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

8.3 Lien

Costs and expenses accruing and/or assessed pursuant to Section 8.2 above shall constitute a lien against the Defaulting Party's Parcel. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recording Office, by Operator or the curing Owner. The claim of lien shall timely comply with all requirements of Title 38 Chapter 1a of the Utah Code, or other applicable law, with regard to filings and notices. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 11.7 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Utah.

8.4 Waivers

No waiver by Operator or any Owner of any default under this Declaration shall be effective or binding on Operator or such Owner unless made in writing by Operator or such Owner and no such waiver shall be implied from any omission by Operator or an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this

Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration.

8.5 Remedies

Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include, to the extent permitted by applicable law, the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to Operator or an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

8.6 Mortgagees

As used herein, the term "**Mortgagee**" shall mean mortgagees under a mortgage and beneficiaries under a deed of trust which is a first lien on any Parcel. The Mortgagee in respect of any Parcel shall be entitled to receive notice of any default by the Owner for such Parcel, provided that such Mortgagee shall have delivered to the Non-Defaulting Party giving such notice a request for such notices stating the address to which such notice shall be sent. Any notice given to such address shall be given and deemed given in accordance with Section 11.7. In the event that any such notice shall be given to such Mortgagee, such Mortgagee shall have all rights of such Defaulting Party to cure such default. Failure to deliver a notice of default to a Mortgagee shall in no way affect the validity of the notice of default as it respects such Defaulting Party or limit the remedies available against the Defaulting Party, but shall not be effective as it respects the interest of such Mortgagee and its lien or other interest upon such Parcel unless and until notice is given to such Mortgagee. The giving of any notice of default (whether or not a default actually exists) or the failure to deliver such notice to a Mortgagee shall in no event create any liability on the part of the Owner declaring a default.

ARTICLE IX.

EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES

9.1 No Termination

No breach of this Declaration shall entitle any Person to cancel, rescind or otherwise terminate this Declaration, or any conditions, covenants, restrictions or easements hereunder.

9.2 Mortgagee Protection

This Declaration and the rights, obligations, covenants, conditions, restrictions and easements hereunder shall be superior and senior to any lien placed upon any Parcel,

including the lien of any mortgage or deed of trust, but no breach of this Declaration shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value. This Declaration and all of the covenants, conditions, restrictions and easements hereunder shall be binding upon and effective against any Person (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel, or interest therein, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the foregoing, this Declaration is subordinate and subject to the Smith's REA and the MACU Declaration (and any other instrument recorded against the relevant portion of the Project as of the date of recordation hereof, except to the extent of any subordination agreement hereafter recorded).

9.3 Subordination of Lien Claims

Any lien claimed pursuant to Section 8.3 shall be subject and subordinate to the interest of any bona fide purchaser or encumbrancer of all or any part of a Parcel, or any interest therein, for fair value, who acquired its interest prior to the date of recordation of such claim of lien, notwithstanding that such claim of lien may be asserted with respect to amounts due prior to the date such claim was duly recorded.

**ARTICLE X.
COVENANTS AND RECORDATION**

10.1 Covenants Run With the Land

This Declaration, and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Declaration, (a) burden the Parcels and are binding upon the Owners and their respective heirs, successors (by merger, consolidation or otherwise), assigns, devisees, administrators, representatives, Occupants and all other Persons acquiring any Parcel, or portion thereof or interest therein, whether by operation of law or in any manner whatsoever, and (b) benefit the Parcels and inure to the benefit of the Owners, and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, as Owners, enforceable as equitable servitudes and constituting covenants running with the land pursuant to applicable law.

10.2 Recordation; Effective Date of Declaration

This Declaration is effective and binding upon its recordation in the Recording Office.

**ARTICLE XI.
MISCELLANEOUS**

11.1 Negation of Partnership

None of the terms or provisions of this Declaration create a partnership between or among the Owners in their respective businesses or otherwise, or constitute the Owners as joint venturers or members of any joint enterprise.

11.2 No Third Party Beneficiary

The provisions of this Declaration are for the exclusive benefit of the Owners and not for the benefit of any third Person, and this Declaration does not confer any rights, express or implied, upon any such third Person.

11.3 Amendment and Termination

Except as otherwise specified in this Declaration, this Declaration may be canceled, modified or amended in whole or in part only by a written and properly recorded instrument, executed by Owners who own Floor Area comprising at least two-thirds (2/3) of the total Proportionate Share within the Project; provided, however, all provisions of this Declaration shall terminate upon termination of the Smith's REA. In addition, each Owner hereby agrees that it will not consent to any cancellation, modification, or amendment to the Smith's REA unless the proposed cancellation, modification, or amendment is approved by Owners representing at least two-thirds (2/3) of the total acreage within the Project.

11.4 Force Majeure

If completion of performance of any act is delayed by reason of acts of God, war, civil commotion, acts of government, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, or by other cause beyond the reasonable control of an Owner or Operator (financial inability, imprudent management and negligence excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

11.5 Severability

Invalidation of any provision contained in this Declaration, or of the application thereof to any Person, by judgment or court order, shall not affect any other provisions hereof, or the application thereof to any other Person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances, or would frustrate the purposes of this Declaration.

11.6 Exhibits

The Exhibits to which reference is made herein are deemed incorporated into this Declaration in their entirety.

11.7 Notices

Any notice to the Parties pursuant to this Declaration shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) electronic transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of electronic transmission, as of

the date of the electronic transmission provided that an original of such electronic transmission is also sent to the intended addressee by means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentences, the addresses for notices given pursuant to this Declaration shall be as follows (provided that unless changed in accordance with the preceding sentences, any notice to any Owner not set forth below shall be given to the address of such Owner's Parcel). The addresses of the Parties and Operator are, until changed as hereinafter provided, as follows:

WDG: WDG Trail Crossing, LLC
610 N 800 W
Centerville, UT 84014
Attn.: Quinton Stephens
Email: quin@cw.land

Daylight and Operator: Capstone Acquisitions, Inc.
c/o Capstone Advisors
1545 Faraday Avenue
Carlsbad, CA 92008
Attn: Alex Zikakis and Jay Matthes
Email: zikakis@capstoneadvisors.com and
matthes@capstoneadvisors.com

DB: DB Trail Crossing, LLC
610 N 800 W
Centerville, UT 84014
Attn.: Quinton Stephens
Email: quin@cw.land

11.8 Construction and Interpretation

The Table of Contents and captions preceding the text of each Article, Section, subsection, Paragraph and Exhibit of this Declaration are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration. The provisions of this Declaration and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against Daylight, Operator or any Owner.

11.9 Attorneys' Fees

If an Owner or Operator brings an action or proceeding (including a cross-complaint, counterclaim or third party claim) against another Owner or Operator to enforce or interpret, or due to the breach or violation of, any provision of this Declaration, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses in such action or proceeding, including reasonable attorneys' fees, which shall be payable whether or not such action or proceeding is prosecuted to judgment. "Prevailing party" within the meaning of this Section 11.9 includes a party who dismisses an action or proceeding in exchange for payment of the sums allegedly due, performance of the

covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

11.10 Signature Pages

For convenience, the signatures of each of the signatories may be executed and acknowledged on separate pages which, when attached to this Declaration, shall constitute this as one complete Declaration.

11.11 Time

Time is of the essence of this Declaration and each and every provision hereof.

11.12 Governing Law

This Declaration shall be construed and enforced in accordance with the laws of the State of Utah.

11.13 Assignment

Notwithstanding anything to the contrary contained in this Declaration, each Party shall have the right to assign all, but not less than all, of its rights to another entity; provided that such assignment is in writing and that such assignee assumes the obligations of such Party, pursuant to this Declaration. Upon any such assignment, the assigning Party shall be relieved of all of its obligations thereafter accruing pursuant to this Declaration and the assignee shall assume such obligations under this Declaration from and after the date of such assignment.

[Signature and Acknowledgement Pages Follow]

DB:

DB TRAIL CROSSING, LLC,
a Delaware limited liability company

By: WDG Trail Crossing, LLC, a Utah limited
liability company, its Manager

By: CW The Manager, LLC, a Utah limited
liability company, its Manager

By: CW Development Group, LLC,
a Utah limited liability company, its
Manager

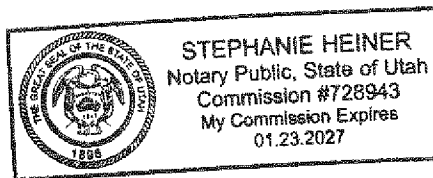
By: Colin Wright
Name: Colin Wright
Title: Manager

STATE OF Utah)
)
) : ss
COUNTY OF Davis)

On this 26 day of June, 2024, before me, the undersigned, a notary
public, personally appeared Colin Wright, proved on the basis of satisfactory
evidence to be the person whose name is subscribed to this instrument, and acknowledged
he/she/they executed the same.

Witness my hand and official seal.

Stephanie Heiner

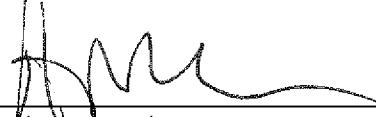


(seal)

[SUBORDINATION]

The undersigned, beneficiary under that certain deed of trust encumbering all or a portion of the Project, which deed of trust was recorded on August 4, 2023 as Instrument No. 14137643 of Official Records of Salt Lake County, Utah, hereby consents to the within Operation and Reciprocal Easement Declaration and hereby subordinates the lien of said deed of trust (as modified from time to time) to the provisions of the Operation and Reciprocal Easement Declaration.

MOUNTAIN WEST REIT, LLC
a Delaware limited liability company

By: 
Andrew Menlove
Its: Authorized Agent

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

On June 17, 2024 before me, Kelley L. Dixon, Notary Public, personally appeared Andrew Menlove who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

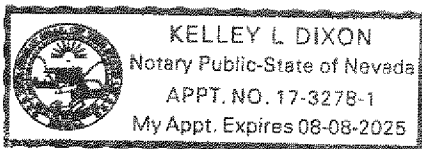


EXHIBIT A

WDG PARCELS

LOT C-105B, KENNECOTT DAYBREAK VILLAGE 7A PLAT 1 1ST AMD

LOT C-109, KENNECOTT DAYBREAK VLGE 7A PL 1 SUB. 10386-9112

EXHIBIT B

DAYLIGHT PARCELS

LOT C-108, KENNECOTT DAYBREAK VLGE 7A PL 1 SUB. 10386-9112

LOT C-106, KENNECOTT DAYBREAK VLGE 7A PL 1 SUB. 10386-9112

LOT C-104, KENNECOTT DAYBREAK VLGE 7A PL 1 SUB. 10386-9112

LOT C-103, KENNECOTT DAYBREAK VLGE 7A PL 1 SUB. 10386-9112

EXHIBIT C

DB PARCEL

LOT C-105A, KENNECOTT DAYBREAK VILLAGE 7A PLAT 1 1ST AMD

EXHIBIT D

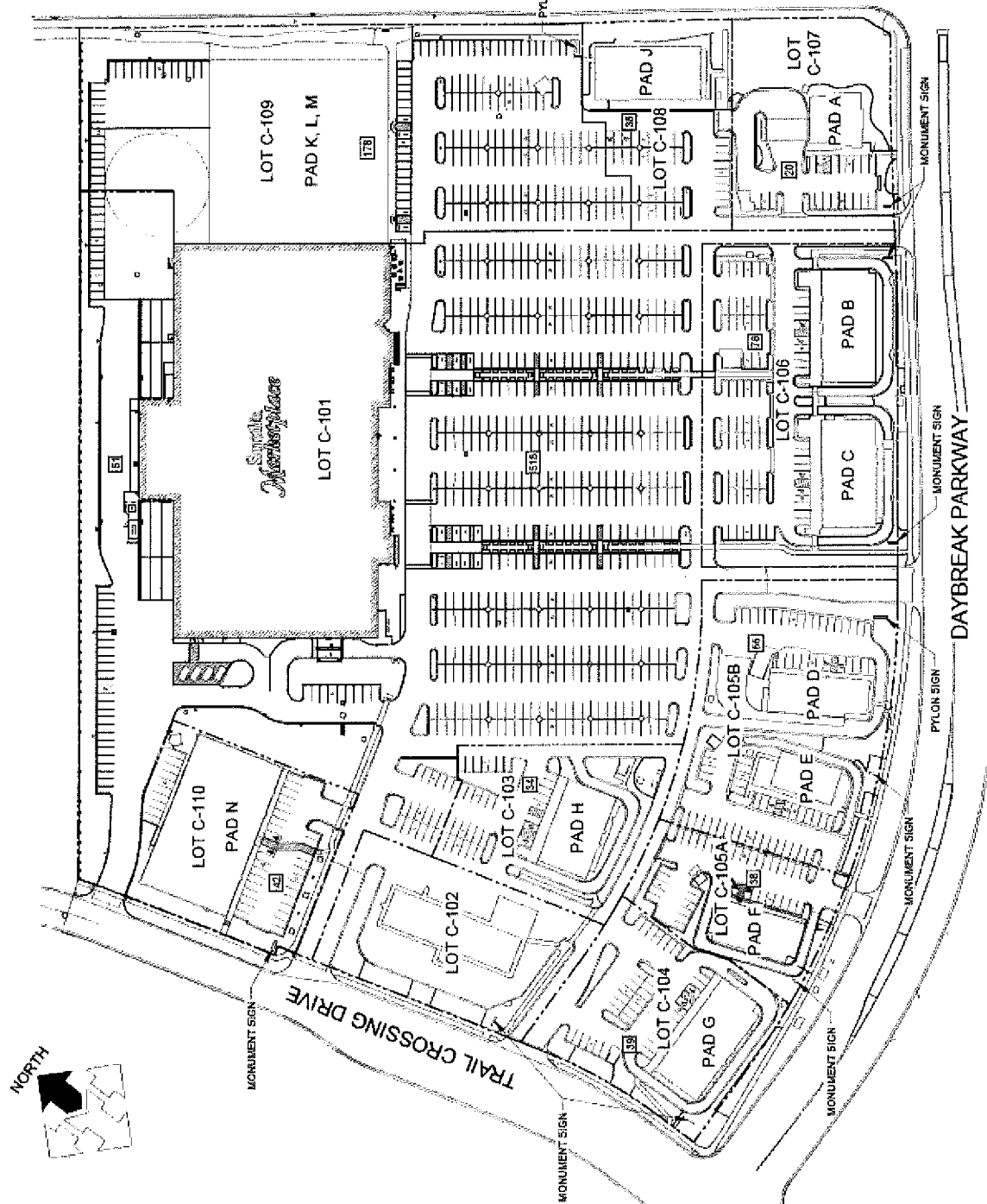
SITE PLAN

(Attached)

PROJECT SUMMARY

LOT NO.	PAD ID	LOT ACREAGE	BLDG. AREA (SF)	STALLS
C-101	SMITH'S	11.01	119,890	569
C-102	SMITH'S	1.06	6,940	0
C-103	PAD H	0.98	6,031	34
C-104	PAD G	1.04	7,813	39
C-105A	PAD F	0.7	4,802	38
C-105B	PAD D	1.69	5,218	66
	PAD E		3,200	
C-106	PAD B	2.00	8,341	78
	PAD C		7,998	
C-107	PAD A	1.06	3,788	20
C-108	PAD J	0.87	7,500	38
C-109	PAD K, L, M	3.27	0*	178
C-110	PAD N	1.09	20,000	42
TOTAL		24.77	201,521	1,102

*FUTURE SQUARE FOOTAGE TO COMPLY WITH PARKING RATIOS SET FORTH IN REA



MCNEIL ENGINEERING
 Surveying and Mapping
 417 South State Street, Suite 200, Salt Lake City, UT 84143
 CH2M Engineering - Consulting & Landscape Architecture
 Structural Engineering • Land Surveying & GIS

EXHIBIT A

EXHIBIT E
SIGNAGE PLAN
(Attached)

TRAIL CROSSING SHOPPING CENTER SIGNAGE PLAN

A1 - A Side (Daybreak Pkwy) - West

Space	Lot Owned/Allocated
A1 - A1	C-109
A1 - A2	C-109
A1 - A3	C-105
A1 - A4	C-103
A1 - A5	C-105
A1 - A6	C-105
A1 - A7	N.A.P. (Smith's Fuel)
A1 - A8	C-108
A1 - A9	C-103 (To be moved from A2)
A1 - A10	C-108
A1 - A11	C-105-A
A1 - A12	C-104

A1 - A Side (Daybreak Pkwy) - Facing West



A1 - B Side (Daybreak Pkwy) - Facing East



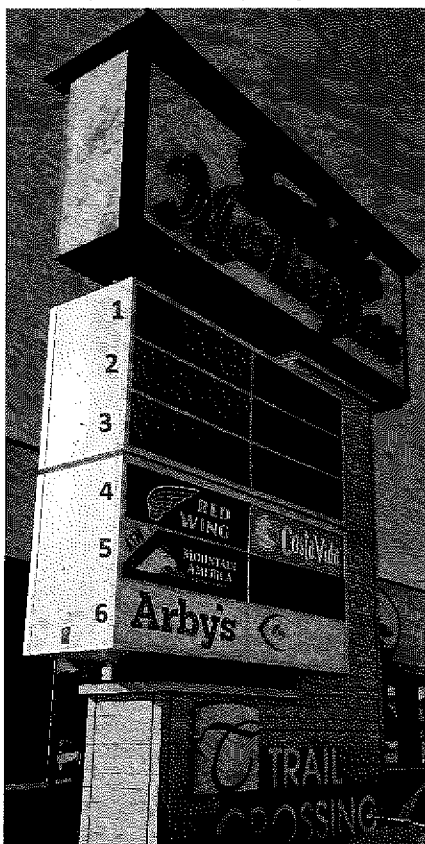
A1 - B Side (Daybreak Pkwy) - East

Space	Lot Owned/Allocated
A1 - B1	C-109
A1 - B2	C-109
A1 - B3	C-105
A1 - B4	C-103
A1 - B5	C-105
A1 - B6	C-105
A1 - B7	N.A.P. (Smith's Fuel)
A1 - B8	C-106
A1 - B9	C-103 (Note to be moved from B2)
A1 - B10	C-108
A1 - B11	C-105-A
A1 - B12	C-104

A2 - A Side (South Mountain View) - North

Space	Lot Owned/Allocated
A2 - A1	C-109
A2 - A2	C-109
A2 - A3	C-108
A2 - A4	C-104
A2 - A5	N.A.P. (MACU)
A2 - A6	C-106
A2 - A7	N.A.P. (Smith's Fuel)
A2 - A8	C-106
A2 - A9	C-106
A2 - A10	C-105
A2 - A11	C-105-A
A2 - A12	C-104

A2 - A Side (S Mountain View - 85) - Facing North



A2 - B Side (S Mountain View - 85) - Facing South



A2 - B Side (South Mountain View) - South

Space	Lot Owned/Allocated
A2 - B1	C-109
A2 - B2	C-109
A2 - B3	C-108
A2 - B4	C-104
A2 - B5	N.A.P. (MACU)
A2 - B6	C-106
A2 - B7	N.A.P. (Smith's Fuel)
A2 - B8	C-106
A2 - B9	C-106
A2 - B10	C-105
A2 - B11	C-105-A
A2 - B12	C-104

EXHIBIT F

CURRENT EXCLUSIVES

(Attached)

Lot #	Suite #	Tenant Name	Exclusive/Restrictions
C-108	J	Pony Express Dental Daybreak, LLC	No other space within the Shopping Center shall offer dental services or dental specialty services (including but not limited to orthodontics, endodontics, pediatric dentistry, oral & maxillofacial, periodontics and prosthodontics).
C-108	B1	Café Trong	Landlord shall not lease any space in the Shopping Center to a tenant specializing in eye brow treatments.
C-108	B2	Elegant Brow and Spa	Landlord shall not lease any space in the Shopping Center to a tenant specializing in eye brow treatments.
C-108	B4	AT&T	Landlord shall not lease any space in the Shopping Center for the sale of AT&T wireless communication products and services, local and long distance services and products, cable television products and services, satellite products and services, video entertainment products and services, internet access products and services, and/or mobile electronic devices and services. Additionally, Landlord and Tenant agree that Landlord shall have the right to lease space to no more than two (2) additional tenants whose primary use is the sale of wireless communication products and services, local and long distance services and products, cable television products and services, satellite products and services, video entertainment products and services, internet access products and services, and/or mobile electronic devices and services.
C-108	B5	Jersey Mike's Subs	Landlord will not sell or permit any party, other than Tenant (and any existing tenants at the time of Lease execution) whose permitted use provision expressly allows the sale of deli style sandwiches, to operate in the Shopping Center whose primary use is the sale of submarine or deli style sandwiches or cheeseburgers for either on-site or off-site consumption. For purposes of this paragraph, "primary use" is defined as a business in which more than ten percent (10%) of gross revenues are derived from the sale of the above products. The foregoing exclusive use restriction shall not apply to supermarkets, grocery stores, convenience stores or other similar retail stores where the sale of submarine or deli style sandwiches is not the primary merchandise (meaning it's less than 10%), or to existing tenants at the time of Lease execution whose permitted use provision expressly allows the sale of deli style sandwiches.
C-108	B6	Beans & Brews	No other store within the Shopping Center shall offer or provide the retail sale of coffee or tea nor shall Landlord permit a competing business within the Shopping Center. A competing business is herein defined as a business in which more than 5% of gross revenues are derived from the sale of coffee and/or tea beverages. The foregoing exclusive use restriction shall not apply to supermarkets, grocery stores, convenience stores or other similar retail stores where the sale of coffee is not the primary merchandise.
C-108	C1	Marco's Pizza	No other space within the Shopping Center shall sell carry-out and/or delivery pizza and pizza-type products if such tenant derives more than fifteen percent (15%) of its gross sales from the sale of carry-out and/or delivery pizza and pizza-type products.
C-108	C2	Great Clips	No other store within the shopping center shall offer or provide hair cuts for under \$25.00, and the following Haircutters shall not be allowed to operate in the development: Sports Clips, Super Cuts, Fantastic Sams and Dollar Cuts.
C-108	C3	Ronnie Nails	Landlord shall not permit a competing business within the Shopping Center. A competing business is herein defined as a business in which more than 25% of gross revenues are derived from providing nail pedicures and manicures. The foregoing exclusive use restriction shall not apply to supermarkets, grocery stores, convenience stores, spas or salons, or other similar retail stores where the provision of nail pedicures and manicures is not the primary service.
C-108	C4	UPS Store	Landlord shall not lease any space to a tenant, nor allow any of its current tenants, including temporary vendors, to offer, sell or provide any of the following products or services, except as incidental to a tenant's transactions or any pharmacy, grocery or health and beauty aid store tenant or to any tenant over 5,000 square feet: packaging and shipping services; UPS, DHL, FedEx or any other related overnight delivery and/or courier services; sales of USPS metered mail facsimile services for profit; printing services (including color and black and white photocopying, digital printing, digital imaging, binding, on-line printing/document access; laminating; large format printing and the production of banners); on-site computer time rentals (including document access); mailbox services; Live Scan technology (i.e., digital fingerprinting) and/or to provide, offer and/or sell any substitutes which are the technological evolution of the foregoing.
C-108	C5	Scenhound	Landlord will not sell or permit any party, other than Tenant, to operate in the Shopping Center whose primary use is the operation of a dog grooming/dog health & wellness business during the Term of this Lease, as such term may be extended.
C-108	C6	Arby's	Landlord shall not permit more than one other tenant in addition to Tenant within the Shopping Center whose primary business is the sale of deli style sandwiches, including, but not limited to sliced beef, sliced turkey, and chicken sandwiches. The foregoing exclusive use restriction shall not apply to supermarkets, grocery stores, convenience stores, or other similar retail stores where the sale of deli style sandwiches is not the primary merchandise or to tenants occupying more than 3,200 square feet. Landlord shall not lease space in the Shopping Center to Capriotti's and Frenhouse Subs.
C-104	G1	Wells Fargo Bank	No other space within the Shopping Center shall offer banking services. The foregoing notwithstanding: (a) Landlord shall have the right to lease one other space in the Shopping Center to a credit union; and (b) banking services shall be permitted in the Smith's Marketplace building.
C-104	G3	Copper View Eye Care	Landlord shall not lease any space in the Shopping Center to a tenant specializing in optometry or, except for Smith's Marketplace, the sale of prescription optical glasses, but not including the sale of sun or reading glasses.
C-103	H1	Swig	Landlord shall not lease space in the Shopping Center to any other tenant whose primary sales are derived from the sale of soft drinks and cookies.
C-103	H2	Discovery Kids Praschod	Landlord shall not permit any other preschool within the Shopping Center. For the avoidance of doubt, preschool does not include daycare.
C-103	H3	Karuwaa	Landlord shall not lease any space in the Shopping Center to a tenant operating a restaurant providing Indian or Nepali cuisine.
C-105B	Pad D	McDonald's	No property located within the Shopping Center will be leased, used or occupied as any of the following named restaurants or food service establishments: Apollo Burgers, A&W, Astor Burgers, Atlanta Burgers, Arco Circle, Backyard Burgers, Burger Chef, Burger King, Burger Street, Carl's Jr., Checkers, Cheeburger, Cheeburger, Crown Burgers, Crystal Burgers, Culver's, Daily Queen, Del Taco, Five Guys Burgers, Freddy's Frozen Custard and Steakburger, Hardee's, Hie's Big H, In and Out Burgers, Jack-in-the-Box, Johnny Rockets, Olympic Burgers, Rally's, Rex, Roy Rogers, Smashburger, Sonic, Steak 'N Shake, The Habit, Tim Horton's, Wendy's, Whiteburger, White Castle.
C-105B	Pad E	Costa Vida	Landlord shall not lease any space within the Shopping Center to a tenant that operates a Mexican food or Tex/Mex Restaurant or another business in which more than 20% of gross revenues are derived from the sale of Mexican food and/or wraps/burritos and other related merchandise.
C-105A	Pad F	Wingstop	Landlord will not lease or permit any space within the Shopping Center, other than the Premises, to: (i) a food or restaurant tenant having the word "Wing" in their name; or (ii) a tenant serving chicken wings as either a main menu item or exceeding fifteen percent (15%) of that Tenant's total annual sales.