

WHEN RECORDED RETURN TO:

Bryan B. Todd
The McCullough Group
405 S. Main Street, Suite 800
Salt Lake City, UT 84111

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

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF MARKETPLACE AT EAGLE MOUNTAIN TOWN CENTER (this "*First Amendment*") is made and entered into as of this 10th day of November, 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*").

RECITALS

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, 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; as further amended by that certain Sixth Amendment to Master Declaration of Covenants for Eagle Mountain Properties Communities Master Association, Inc., also recorded with the Recorder's Office on July 30, 2021, as Entry No. 133535:2021, and as further amended by that certain Seventh Amendment to Master Declaration of Covenants for Eagle Mountain

Properties Communities Master Association, Inc., also recorded with the Recorder's Office on August 23, 2021, as Entry No. 146829:2021 ("**Master Declaration**").

B. The Master Declaration anticipated 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 uses.

C. As the Declarant desired to designate the Shopping Center Land (as defined in the Declaration) as a separately denominated commercial District subject to the Master Declaration, and to establish certain covenants, conditions, restrictions and easements to such District, and Master Declarant consenting, the Declarant and the Master Declarant caused to be recorded in the Recorder's Office that certain Declaration of Covenants, Conditions, Restrictions and Easements of Marketplace at Eagle Mountain Town Center, dated July 19, 2021 and recorded July 27, 2021 as Entry No. 130929:2021 (the "**Declaration**").

D. The Declaration encumbers that certain real property located in Utah County, Utah, more particularly described therein, and described on Exhibit A, attached hereto (the "**Shopping Center Land**").

F. Capitalized terms which are not otherwise defined in this First Amendment shall have the same meanings given to them in the Declaration.

G. Being in the Declarant Control Period (as such is defined in the Declaration), Declarant has the right to modify or amend the Declaration at any 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.

H. The Declarant now desires to amend the Declaration as provided for herein.

NOW, THEREFORE, Declarant hereby modifies the Declaration as follows:

1. Section 4 of the Declaration is hereby amended to specifically include the shared access easements indicated on Exhibit B (the "**Shared Access Areas**"), attached hereto and by this reference incorporated herein. In addition, notwithstanding Section 2.2.3 of the Declaration, Declarant shall not alter such Shared Access Areas. All other terms, conditions, and reciprocal access easements for vehicular and pedestrian ingress and egress over the common driveways and sidewalks remain the same.

2. The first sentence of Section 2.5.1.1 of the Declaration is amended to provide as follows:

Subsequent to the Declarant Control Period, no Building may be constructed that materially deviates from approved plans, 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.

3. The following is added to the end of Section 5.2 of the Declaration: "For clarification, any Owner may allow its employees, contractors, agents, officers and partners to park on such Owner's Lot."

4. The last sentence of Section 5.3.2 of the Declaration is hereby amended and replaced as follows: "Except in connection with the operation of a gas station and related facilities on Pad F, no exterior Building or freestanding 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 Declarant or by the Consenting Owners and Tenant Agents."

5. Section 3.2 of the Declaration is amended to provide as follows:

3.2. **Exclusive Uses.** As long as Declarant owns any portion of the Shopping Center or interest therein, it shall have the right to grant exclusive use rights ("**Exclusives**") to tenants, purchasers and other occupants of portions of the Shopping Center on such terms and conditions as Declarant may desire. The Exclusives which have been granted to the date hereof are listed on **Schedule "E"** attached hereto. At no time shall any tenant, purchaser and or other occupant of any portion of the Shopping Center, nor any other party, other than the party to whom Declarant has granted an Exclusive, engage in the activity described in such Exclusive without Landlord's prior written consent. As long as Declarant owns any portion of the Shopping Center or interest therein, it shall have the right to unilaterally and without any consent or approval whatsoever amend said **Schedule "E"** to reflect the Exclusives then-currently in effect.

The current version of said **Schedule "E"** is attached to this First Amendment. Capitalized terms used but not defined in said "**Schedule E**" shall be defined as otherwise set forth in the Declaration, as amended hereby.

6. To the extent there are any inconsistencies between the Declaration and this First Amendment, or any previous declarations and amendments, the terms, conditions and provisions of this First Amendment shall control.

7. Except as specifically set forth to the contrary in this First Amendment, the Declarant hereby ratifies, confirms and incorporates by reference herein as if fully set forth each and every term, representation, warranty, condition and covenant of the Declaration which shall remain in full force and effect. Any provisions of the Declaration not amended by this First Amendment but related to the subject matter of this First Amendment shall be interpreted in such a manner as to give full force and effect to the intent of this First Amendment even if contrary to the original intent of any such provision.

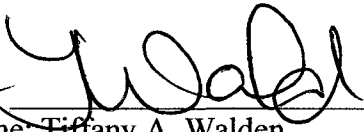
8. This First Amendment shall be effective once it has been: (i) fully executed, and (ii) recorded in the in the official records of Utah County, Utah.

9. This First Amendment may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one fully executed document.

IN WITNESS WHEREOF, the Declarant has executed this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements as of the day and year first set forth above.

EM COMMERCIAL DEVELOPMENT, LLC,
a Utah limited liability company

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

By: 
Name: Tiffany A. Walden
Its: Manager

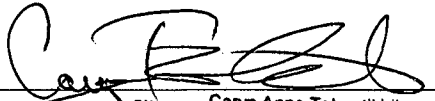

By: Its Manager, CP EM, LLC,
a Utah limited liability company

By: 
Name: William G. Gaskill
Its: Manager

[acknowledgements on following page]

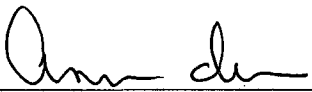
STATE OF FLORIDA)
)
:SS.
COUNTY OF BREVARD)


On this 10th day of November, 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 First Amendment and did certify that this First Amendment was approved by Declarant's members. UT Driver's License

NOTARY PUBLIC: 

Caryn Anne Tshontikidis
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG955932
Expires 2/5/2024

STATE OF UTAH)
)
:SS.
COUNTY OF Salt Lake)

On this 12th day of December, 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 First Amendment and did certify that this First Amendment was approved by Declarant's members.

NOTARY PUBLIC: 


Anna Irons
Notary Public
State of Utah
My Commission Expires July 9, 2022
#701075

[additional signatures and acknowledgements to follow]

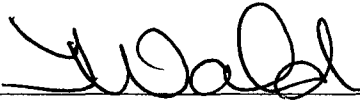
**OWNER CONSENT
TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND
EASEMENTS OF MARKETPLACE AT EAGLE MOUNTAIN TOWN CENTER**

In witness whereof, the undersigned, as owner of the portion of the property described in **Exhibit "A"** of this First Amendment, hereby consents to the within and foregoing First Amendment and the recording of such this 10th day of November 2021.

OWNER:

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 FLORIDA)
)
) :ss.
COUNTY OF BREVARD)

On this 10th day of November, 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 she is the authorized agent of the Owner authorized to execute this First Amendment signed by her on behalf of said Owner by authority of its operating agreement and who acknowledged to me that said Owner executed the same. UT Drivers License

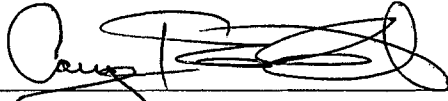
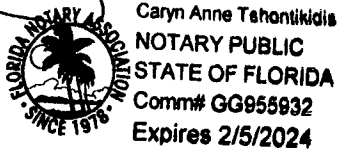
NOTARY PUBLIC: 


EXHIBIT A**LEGAL DESCRIPTION OF SHOPPING CENTER LAND****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:

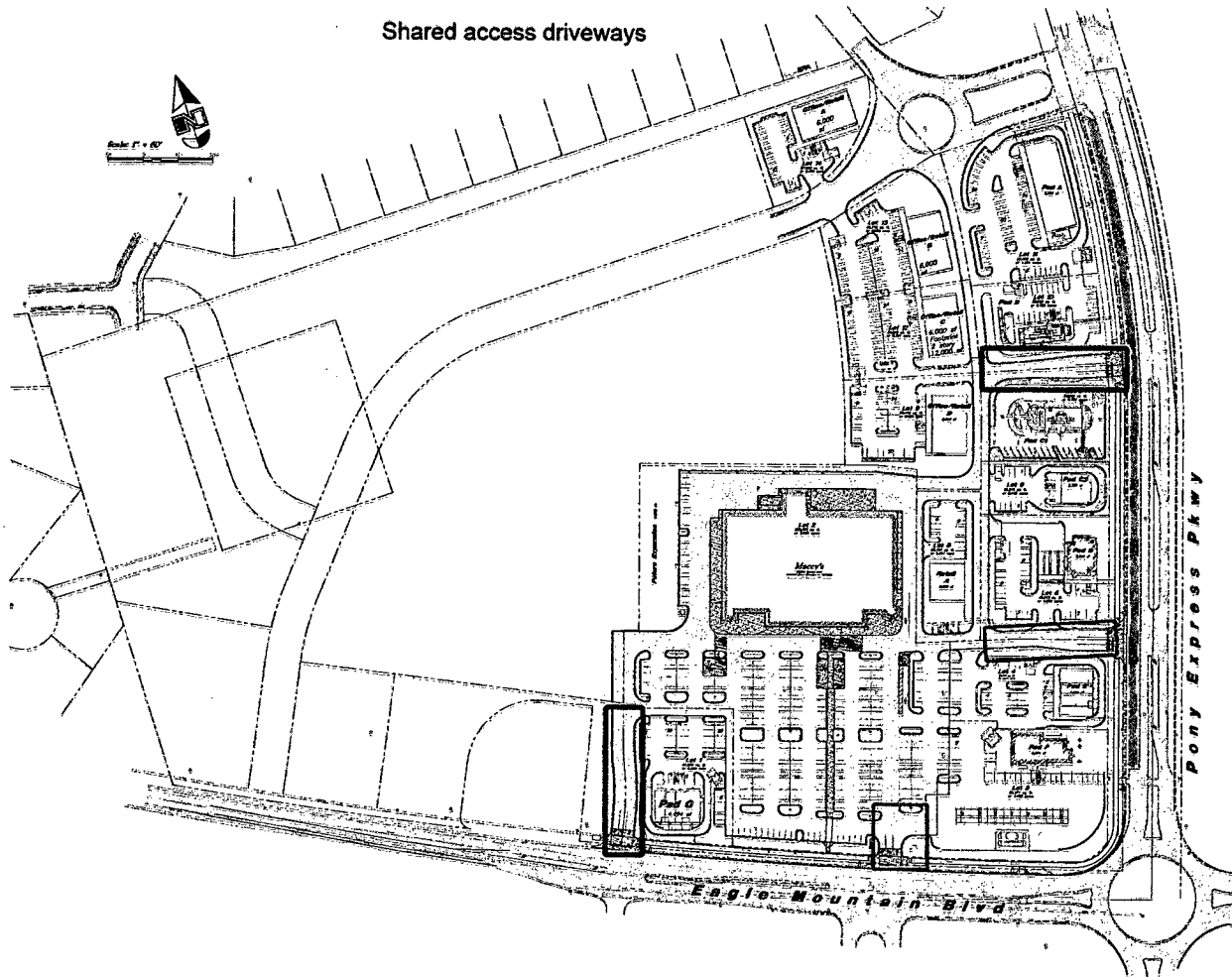
Commencing North 1746.91 feet and West 2271.8 feet from the Southeast Corner of Section 12, Township 6 South, Range 2 West, Salt Lake Base and Meridian; thence West 391.09 feet; thence North 251.34 feet; thence N89°57'53"E 99.05 feet; thence S22°13'07"E 177.82 feet; thence S89°50'58"E 228.29 feet; thence 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 $N0^{\circ}27'04''E$ 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 $S88^{\circ}43'29''W$ 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 $S18^{\circ}56'36''W$ 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: $N18^{\circ}57'04''E$) 929.60 feet through a central angle of $5^{\circ}21'04''$ (chord: $N68^{\circ}22'24''W$ 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: $N24^{\circ}17'50''E$ 228.84 feet; thence Northwesterly along the arc of a 9,725.00 foot radius non-tangent curve (radius bears: $N24^{\circ}18'19''E$) 83.78 feet through a central angle of $0^{\circ}29'37''$ (chord: $N65^{\circ}26'53''W$ 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 $88^{\circ}57'51''$ (chord: $S70^{\circ}19'00''W$ 167.73 feet); thence $S25^{\circ}50'05''W$ 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 $90^{\circ}27'15''$ (chord: $S19^{\circ}23'33''E$ 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: $N25^{\circ}22'50''E$) 507.95 feet through a central angle of $2^{\circ}55'26''$ (chord: $N63^{\circ}09'27''W$ 507.90 feet) to the north line of the South 1/2 of the SW1/4 of said Section; thence $N88^{\circ}40'38''E$ 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 $N88^{\circ}43'29''E$ along the 1/16th (40 acre) line 317.50 feet to the point of beginning.

EXHIBIT B SHARED ACCESS AREAS



SCHEDULE "E"
SHOPPING CENTER EXCLUSIVE USES.

Grocery Store: 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.

Hardware Store: 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.

Drugstore/Pharmacy: 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.

The foregoing, however, 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.

Such limitations and exclusive rights granted to Grocery Store Owner or a Qualified Lessee as specified herein 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.

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.

Credit Union: 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 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.

Fuel Service Station/Convenience Store: So long as a fuel service station/convenience store is located and operating on the Maverik Parcel defined below, no portion of the Shopping Center, with the exception of the Maverik Parcel, shall be used for any of the Maverik Prohibited Uses. The “**Maverik Parcel**” shall mean, Lot 3 of the Subdivision Plat of Marketplace at Eagle Mountain Town Center Subdivision, as recorded in the official records of the Utah County Recorder’s Office on July 19, 2021, as Entry No. 127110:2021, also known and further defined as “Pad F” under the terms of the Declaration. The “**Maverik Prohibited Uses**” shall mean: (i) operating a fuel sales facility, convenience store, or other business engaging in the sale of fuel; (ii) in addition, and not by way of example, the following convenience stores operating under the listed trade names, are prohibited upon the Declaration Property, or any portion thereof, for the time period specified herein: Tesoro, Chevron, Arco, Flying J, Circle K, Amoco, Phillips, Sinclair, 7-11, Exxon, Texaco, and Top Stop; and (iii) operating a smoke shop or alcohol and/or liquor sales shop or store. Maverik shall have the right to exercise and pursue any and all remedies available at law or in equity to enforce this provision, including injunctive relief. For purposes of this Section, an alcohol and/or liquor sales shop or store shall be defined as any retail or wholesale establishment for which the primary source/majority of revenue is derived from the sale of alcohol and/or liquor (including boxed liquor) and alcohol and/or liquor related products, which are sold for consumption off the licensed premises. For purposes of this section, a smoke shop or store shall be defined as any retail or wholesale establishment for which the primary source/majority of revenue is derived from the sale of tobacco and/or its related products.