

PREPARED BY AND WHEN
RECORDED RETURN TO.

Robert A. McConnell, Esq.
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111

Entry 2013000530
Book 1313 Page 730-758 \$79.00
17-JAN-13 01:47
RANDY SIMMONS
RECORDER, UTAH COUNTY, UTAH
PARR BROWN GEE & LOVELESS
185 SOUTH STATE ST STE 800 SLC UT 8
Rec By: HEATHER COON , DEPUTY

Entry 2013000530
Book 1313 Page 730

Parcel Numbers.

05-078-0026 (Lot A)
05-078-0027 (Lot B);
05-078-0028 (Lot C)
05-078-0029 (Lot D)
05-078-0030 (Lot E)
05-078-0031 (Lot F)
05-078-0032, 05-078-0035 & 05-078-0036 (Lot G)
05-078-0033 (Lot H)
05-078-0034 (Lot I)
05-075-0016 (Lot J)
05-075-0017 & 05-081-0027 (Lot K)

DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS

for

VERNAL TOWNE CENTER

Dated as of the 17 day of January, 2013

DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS
VERNAL TOWNE CENTER

THIS DECLARATION of Restrictive Covenants, Conditions and Restrictions (this "Declaration") is made and executed on this 17 day of January, 2013, by Gardner Towne Center, LLC, a Utah limited liability company ("Declarant"), whose address is 90 South 400 West, Suite 330, Salt Lake City, Utah 84101.

RECITALS

WHEREAS, Declarant is the sole owner of the real property and improvements that constitute the Development, as more particularly defined below;

WHEREAS, Declarant, by recording this Declaration, intends and desires to impose upon the Development, protective and restrictive covenants, conditions, restrictions, and stipulations to affect the development, use, and enjoyment of all Parcels, as defined below, in the Development, with certain parking, streets, utilities, drainage, and other common areas and facilities for the benefit of the Development,

WHEREAS, the covenants, conditions, and restrictions contained in this Declaration and in the attachments hereto touch and concern the land and shall be equitable servitudes that shall run with the land; and

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants, conditions, and stipulations, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property associated with the Development.

Each Owner of any Parcel, as defined below, by accepting a conveyance to or ownership interest in any Parcel agrees to the following terms, conditions restrictions, and protective covenants:

1 Definitions. As used in this Declaration, each of the following terms shall have the meaning indicated:

1.1. "Buildings" means all buildings located in the Development at any time which are intended for permanent use or occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and all areas used exclusively by the occupants of such buildings, including, without limitation, drive through areas, trash enclosures, playgrounds and platforms, ramps, docks and signage affixed to the outside of such buildings "Building" means any of the Buildings

1.2. "Common Area" means the Common Landscaping Areas, the Common Utility Facilities, the Common Vehicular and Pedestrian Areas, and any signage advertising the Development as a whole, including monument signage. All portions of the Common Area initially shall be improved and developed in accordance with Paragraph 2 by the Owner of the Parcel on which such portions are located and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4 Declarant is not obligated to develop the Common Area.

1.3 "Common Expense Percentage" for any particular Parcel is calculated as follows: (a) divide the Floor Area of the Completed Building(s) located on the Parcel concerned by the total Floor Area of all Completed Buildings located in the Development, (b) multiply the resulting quotient by 100; and (c) express the resulting product as a percentage. The Common Expense Percentages of the Parcels shall be adjusted from time to time by written notice given by the Manager to each Owner as of the date on which Completed Buildings are located on any Parcel.

1.4 "Common Expenses" means the following:

(a) reasonable costs, expenses, fees and other amounts (including appropriate reasonable reserves) paid or incurred by the Manager in connection with the improvement (excluding the initial improvement and development), operation, management, maintenance and repair of the Common Area and the performance of the Manager's duties and rights under Paragraphs 4 or 5 or any other provision of this Declaration, including, without limitation, all reasonable costs, expenses, fees and other amounts (including, without limitation, those which are properly capitalized under generally accepted accounting principles) relating to utilities; cleaning; sweeping, ice, snow and rubbish removal; landscaping; resurfacing; re-striping; replacing damaged or worn-out Improvements (including lighting) located on the Common Area, insurance; licenses and permits; supplies; traffic regulation and control; fire, police protection and other security services, and personnel (other than managerial personnel) necessary to perform any of the foregoing and depreciation allowance on any machinery or equipment owned by the Manager and used exclusively in connection with such matters;

(b) all reasonable costs, expenses, fees and other amounts (including, without limitation, those which are properly capitalized under generally accepted accounting principles) relating to maintenance undertaken pursuant to the Lowe's Declaration (to the extent, if any, that such maintenance is separate from the maintenance undertaken pursuant to Section 1 4(a)),

(c) any assessment for public improvements levied against the entire Development rather than against individual Parcels;

(d) managerial, clerical and overhead costs, expenses, fees and other amounts, all of which shall be deemed to be equal to fifteen percent (15%) of the total of all other Common Expenses; and

(e) Common Expenses due but not paid to the Manager, which are determined by the Manager not to be legally or practicably recoverable after the Manager has exercised its best reasonable efforts to collect the same from the responsible Owner and has determined that all reasonable remedies for collection have been exhausted, including the filing and enforcement of the lien described in Paragraph 5.4, if appropriate, together with all interest on, and costs and attorneys' fees incurred in connection with, such unpaid Common Expenses; provided, however, that if such unpaid Common Expenses are later received by the Manager from or on behalf of the responsible Owner, any amounts previously paid by any other Owners pursuant to the preceding portion of this sentence shall be refunded pro rata to such other Owners.

1.5 "Common Expense Share" means the product obtained by multiplying the Common Expenses for the relevant period by the Common Expense Percentage for the Parcel concerned

1 6. "Common Landscaping Area" means the "Common Landscaping Area" generally located along US 40 and shown on the attached Exhibit A, incorporated by this reference. The Common Landscaping Area shall be used for the purposes set forth in Paragraph 3.3 and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4. Declarant may, but is not obligated to, designate additional or different Common Landscaping Area in an amendment to this Declaration executed and recorded pursuant to Paragraph 14.

1 7. "Common Utility Facilities" means, but is not limited to, all pipes, lines, wires, conduits and related facilities and improvements for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water that are intended, designed or used for the benefit of the Common Area or more than one Parcel. The Common Utility Facilities shall be used for the purposes set forth in Paragraph 3 2 and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4.

1 8. "Common Vehicular and Pedestrian Area" means those Vehicular and Pedestrian Areas identified as "Common Vehicular and Pedestrian Areas" shown on the attached Exhibit B, incorporated by this reference. Subject to reimbursement by the Owners in accordance with Paragraph 5, the Common Vehicular Pedestrian Areas shall be maintained by the Manager pursuant to Paragraph 4. Declarant may, but is not obligated to, designate additional or different Common Vehicular and Pedestrian Areas in an amendment to this Declaration executed and recorded pursuant to Paragraph 14.

1 9. "Completed Building" means a Building as of the date either of the following has first occurred: (a) a certificate of occupancy has first been issued for all or a portion of such Building by the appropriate governmental authority, or (b) all or a portion of such Building is first used or occupied.

1 10. "Development" means Vernal Towne Center, which is 25 492 acres of real property more particularly described Exhibit C, incorporated by this reference. The Development includes the Parcels and any real property defined as an additional part of the Development in any amendment to this Declaration executed and recorded pursuant to Paragraph 14, together with all Improvements located on the Parcels or such additional real property.

1 11. "Development Guidelines" means the standards, requirements and restrictions that may be adopted from time to time by the Manager pursuant to Paragraph 2.5.

1.12 "Floor Area" means the gross area of each Building concerned, measured from the exterior surface of the exterior walls of such Building, including all levels of any multi-floor Building

1.13. "Improvements" means all Buildings, Common Utility Facilities, Landscaping, parking areas, roads, driveways, walkways, curbs, gutters, medians, flower boxes, sidewalks, trails, exterior lighting, fences, walls, signs, utility systems and facilities and other improvements located on the realty concerned. "Improvement" means any of the Improvements.

1.14. "Landscaping" means all outdoor areas in the Development landscaped with lawn, flowers, ground cover, shrubbery, trees, ponds, fountains, gardens or similar improvements.

1.15. "Lowe's Declaration" means those certain Easements, Covenants, Conditions and Restrictions, dated May 2, 2007 and recorded in the office of the Uintah County Recorder on May 2, 2007 as Entry No. 2007005122 in Book 1030 at Page 458-515, as the same may be amended from time to time.

1.16. "Majority of the Owners" means the Owners holding a majority of the aggregate Common Expense Percentages.

1.17. "Manager" means Declarant, unless and until the date on which Declarant transfers all of its interest as an Owner in all portions of the Development, on which date the Manager shall automatically become and remain with such other Manager selected by Declarant in its sole discretion. The Manager's rights and duties under this Declaration may be assigned at any time to any other Owner or to an owners' association that may be formed by the Manager at any time, in the Manager's sole discretion, for the purpose of performing the Manager's functions under this Declaration. If the Manager forms such an owners' association, the voting interests in such association shall be held pro rata by the Owners based on their respective Common Expense Percentages. Notice of any such assignment shall be recorded in the Official Records and shall, pursuant to Paragraph 14, be effective as an amendment to this Declaration, with no signature other than the signature of the existing Manager and the new Manager being required. For the period during which the Manager is an Owner other than Declarant (and not an owners' association), the rights and duties of the Manager under this Declaration shall be an appurtenance to the Parcel owned by such Owner and shall run with such Parcel.

1.18. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records

1.19. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.20. "Official Records" means the official records of the Uintah County, Utah Recorder.

1.21. "Owner" means the fee owner of record in the Official Records of the Parcel concerned. If any Parcel has more than one Owner, the liability of each such Owner under this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.22. "Parcels" means the parcels of land located in Uintah County, Utah, described as Lots A through K on the Record of Survey attached hereto as Exhibit D, incorporated by this reference, together with all Improvements on such land. "Parcel" means any of the Parcels. No Parcel may be subdivided without the prior written approval of the Manager, any Mortgagee of any affected Parcel, and the applicable government body or unit.

1.23. "Qualified Mortgage" means a Mortgagee of which Manager and each Owner has been given written notice, including such Mortgagee's name and address.

1.24. "Retail Office" means insurance offices, travel agents offices, accountants offices, tax preparer office, engineering or architect office, escrow and/or title offices, medical offices and such other offices customarily found in retail shopping centers. Notwithstanding the foregoing, medical offices are further restricted such that the following are not permitted: specialized clinics or practices (e.g., family planning clinic, blood donation center, cosmetic surgery, immunology,

gynecological/obstetrics or indigent services clinics, etc.) unless used for the following specialized clinics or practices: pediatrics, cardiac care, orthopedics, dental, podiatrist, ophthalmology or opticians

1.25. "Taxes" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public authority on or against the realty concerned

1.26. "Vehicular and Pedestrian Areas" means all areas located in the Development at the time concerned that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways, sidewalks and trails, but excluding any platforms, ramps and docks comprising a portion of the exterior of any Buildings

2. Improvements.

2.1. Manager Approval. Except for maintenance and repair of the Common Area done by the Manager in accordance with this Declaration, no construction, excavation, grading or similar work in the Development shall be commenced, no Improvement in the Development shall be constructed or installed, and no alteration, refurbishing or repainting of the exterior of any Improvement shall be performed, unless and until complete plans (including, without limitation, exterior elevations and exterior building materials, colors and signage) have been first submitted to, and approved in writing by, the Manager, such approval not to be unreasonably withheld, conditioned, or delayed. The Manager may (but is not obligated to) use a committee approach for such review. Such plan submission and approval requirements shall not apply to repairs or alterations that do not (a) affect the size or the external design or appearance of a pre-existing Improvement, (b) change the permitted use, or (c) change the then-existing parking ratio. In determining whether to approve or disapprove plans submitted, the Manager shall use its reasonable, good faith judgment to assure that all Improvements are of good quality and sound construction, functionally harmonize with existing surroundings and Improvements, and comply with the other requirements of this Declaration, the Lowe's Declaration (with respect to Parcels A, C, D, E, F, G and H only) and the Development Guidelines. The Manager may, however, approve plans that entail a variance from such requirements so long as in the reasonable judgment of the Manager such variance is necessary or appropriate and that, with respect to Parcels A, C, D, E, F, G and H only, such variance does not contravene the requirements of the Lowe's Declaration. All Improvements must comply with all applicable zoning laws or other similar laws of any government authority having jurisdiction over the Development, and with respect to Parcels A, C, D, E, F, G and H only, the Lowe's Declaration; provided, however, that the fact that Improvements comply with applicable zoning and other laws shall not necessarily mean that such Improvements will be permissible under this Declaration or the Lowe's Declaration. The Manager's approval of plans pursuant to this Declaration shall not be deemed an approval of such plans pursuant to the Lowe's Declaration (with respect to Parcels A, C, D, E, F, G and H only), which approval must be separately obtained by the applicable Owner. Any plans submitted to the Manager shall be approved or disapproved by the Manager in writing within thirty (30) days after submission. If the Manager fails to take any action within such period, the Manager shall be deemed to have approved the material submitted; provided, however, that to the extent that such material contemplates a variance from the requirements of this Declaration, the Lowe's Declaration (with respect to Parcels A, C, D, E, F, G and H only) or of the Development Guidelines, the failure of the Manager to timely take action shall be deemed a disapproval of such material. Any disapproval of such material by the Manager shall be in writing and shall be accompanied by a reasonably detailed explanation for such disapproval. Review or approval by the Manager of any plans shall be solely for its own benefit, and shall not be deemed to be or to result in any warranty, representation or conclusion by the Manager relative to the technical adequacy of such plans or

the quality, safety, soundness or compliance with applicable law of the Improvements described by such plans or the compliance of such plans with the Lowe's Declaration. The Manager shall not be liable for damages by reason of any action, inaction, approval or disapproval by the Manager with respect to any request made pursuant to this Declaration so long as such action, inaction, approval or disapproval did not occur as a result of the Manager's gross negligence or willful misconduct

2.2. Use No part of the Development may be occupied for any use that violates any applicable law, ordinance, rule or regulation or which is inconsistent with this Declaration or the Lowe's Declaration. Buildings shall be used only for commercial purposes, including, without limitation, hotels, financial institutions, Retail Offices, retail stores and eating establishments. All Buildings shall be.

(a) first-class buildings designed for hotel, financial institution, Retail Office, retail store, eating establishment or other commercial use of the type and quality typically found in first-class, high-quality commercial developments;

(b) architecturally and aesthetically compatible with all other then-existing Buildings;

(c) constructed and operated in such a manner as will preserve the fire insurance rating on any other then-existing Buildings, and

(d) constructed in compliance with all applicable state, county and municipal subdivision, building, zoning, sign and other laws, ordinances, rules and regulations.

Notwithstanding anything in this Declaration to the contrary, no portion of Parcel K shall be used for Retail Office use.

2.3 Construction. Prior to or in conjunction with the construction and completion of any Building, related Landscaping and Vehicular and Pedestrian Areas shall be constructed by the Owner of the Building concerned in accordance with this Declaration. Vehicular and Pedestrian Areas shall be surfaced with asphalt or concrete, shall be adequately striped or otherwise marked and shall be graded and constructed in such a way as to ensure adequate water drainage. After the initial improvement and development of any Landscaping or Vehicular and Pedestrian Areas, the same shall not be demolished, removed or altered in any material respect without the prior written approval of the Manager, such approval not to be unreasonably withheld. All exterior parking lot lighting fixtures shall be metal halide. All parking spaces required under applicable zoning ordinances, development codes or other municipal requirements for all Buildings on any Parcel shall be wholly located within such Parcel.

2.4. Maintenance Each Owner shall maintain in good and attractive order, condition and repair all Improvements situated on such Owner's Parcel that are not required by this Declaration to be maintained by the Manager. No provision of this Declaration shall be construed to mean that any Building cannot be razed or removed at any time or must be restored or reconstructed if damaged or destroyed. However, if an Owner razes or removes any Building, or if any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Parcel on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and sightly condition pending construction of another Building.

2.5. Development Guidelines. The Manager may adopt and promulgate (and may from time to time as necessary or appropriate, modify), and shall furnish to any interested party on written request, such Development Guidelines as may be reasonably necessary or appropriate, in the reasonable judgment of the Manager, to amplify or make more detailed any restrictions or requirements contained in this Declaration for Improvements, to advise interested parties of the standards and policies that will be applied in reviewing plans for proposed Improvements and to establish appropriate procedural rules with respect to the submissions of plans for approval.

3. Common Area Easements

3.1. Access Easement. Each Parcel shall have appurtenant thereto and be benefited by, and the Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress and vehicular parking (without charge) on, over and across those areas designed for such use, including, without limitation any Common Vehicular and Pedestrian Access Area. The use of such right-of-way and easement shall be limited to parking for the public and general commercial purposes, which shall include reasonable and customary deliveries. Once constructed, no Vehicular and Pedestrian Areas shall be reconfigured so as to eliminate or substantially impair the right-of-way and easement created pursuant to this Paragraph 3.1 without the prior written approval of the Manager, such approval not to be unreasonably withheld, conditioned, or delayed.

3.2. Utility Easement. Each Parcel shall have appurtenant thereto and be benefited by, and the Common Area and each Parcel (except for those portions on any Parcel on which Buildings are or will be located) shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related *facilities* (including, without limitation, any underground Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water) under, through and across the Common Area and each Parcel (except for those portions on any Parcel on which Buildings are or will be located). Prior to installation, the location of such pipes, lines, wires, conduits and related facilities must be approved by the Owner of the Parcel to be burdened by such right-of-way and easement, such approval not to be unreasonably withheld, conditioned, or delayed. If the rights provided for in this Paragraph 3.2 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Owner's sole cost, restore to their previous condition any Improvements that may be damaged as a result of such exercise. Each utility pipe, line, wire, conduit and related facility located in the Development shall be located underground to the extent reasonably possible.

3.3. No Obstruction Except to the extent approved by the Manager pursuant to Paragraph 2.1, no Owner shall permit to be constructed or placed on any portion of the Common Area or any Vehicular and Pedestrian Areas any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Development, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that the Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area or any Vehicular and Pedestrian Areas. Any obstruction or interference permitted under this Paragraph 3.3 shall be done in a manner reasonably calculated to minimize its impact on businesses in the Development.

4. Manager's Duties Regarding Common Areas and Pursuant to the Lowe's Declaration.

4.1. Generally. The Manager shall timely perform or cause to be performed (for example, through subcontractors, including affiliates of the Manager) the duties set forth in this Paragraph 4, for which the Manager shall be reimbursed in accordance with this Declaration. All reasonable costs, expenses, fees and other amounts incurred or payable by the Manager in connection with the duties set forth in this Paragraph 4, whether or not such costs, expenses, fees or other amounts are properly capitalized under generally accepted accounting principles, are part of the Common Expenses payable by the Owners under Paragraph 5. The Manager shall have no obligation to perform, and no liability for failure to perform, any obligation set forth in this Declaration, the cost of which is to be reimbursed (in whole or in part) by the Owners, if the funds to pay for such obligation are not timely received by the Manager pursuant to this Declaration.

4.2. Maintenance of Common Area. After the Common Area is initially improved and developed, the Manager shall keep the Common Area in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class commercial development (except that as regards the Common Utility Facilities, the Manager shall be obligated to accomplish the foregoing only to the extent that such matters are not the responsibility of or accomplished by the respective utility companies involved); provided, however, that each Owner shall be solely responsible to provide and pay for the watering of all Landscaping located on such Owner's Parcel. The foregoing shall include, without limitation, maintenance, repair and replacement, as necessary and appropriate, of all Landscaping and other Improvements located on the Common Area, including, without limitation, maintaining, repairing and replacing asphalt, parking lot lighting and parking medians and keeping the Common Area reasonably free of snow, ice and rubbish.

4.3. Insurance on Common Area. The Manager shall maintain commercial general liability insurance insuring all Owners and such other persons who hold a leasehold estate or other interest in any Parcel and who are designated as a named insured in a writing delivered to the Manager by the Owner of such Parcel, as their respective interests may appear, against all claims for bodily injury, death or property damage occurring on the Common Area. Such insurance shall be carried with a company having a rating of not less than A-:7 in the most recent issue of Best's Key Rating Guide, Property-Casualty and shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$3,000,000 in the aggregate, for bodily injury, death and property damage, which may be increased by the Manager in its sole and reasonable discretion from time to time.

4.4. Damage of Common Area. If all or any part of the Common Area is damaged or destroyed through casualty, the Manager shall, as soon as reasonably possible, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction concerned. Prior to such rebuilding and restoration, each Owner shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Expense Percentage of such Owner by the projected cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from persons causing such damage actually received by the Manager). Appropriate additional payments by, or refunds to, each Owner shall be made on completion of such rebuilding or restoration. Alternatively, the Manager may collect the actual or projected cost of such rebuilding or restoration following commencement or completion of such rebuilding or restoration.

4.5. Condemnation of Common Area. If all or any part of the Common Area is taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be paid to the Manager, except for any portion of such award or proceeds for the value of the land (as opposed to any Improvements on the land), which portion shall be paid to the Owner of such land. The Manager shall, as soon as reasonably possible, restore the remaining Improvements in compliance with all applicable laws, ordinances, rules and regulations. Such restoration shall be of equal or better quality in materials and workmanship as the original Improvements, and the cost of such restoration, in excess of the condemnation award and proceeds available, shall constitute Common Expenses. Any condemnation award or proceeds for the Improvements remaining after such restoration shall be distributed to each Owner on the basis of such Owner's Common Expense Percentage.

4.6 Default of Manager. If the Manager fails to perform any obligation under this Paragraph 4 and such failure continues for a period of thirty (30) days after written notice of such failure is given to the Manager by any Owner or Qualified Mortgagee, or if the performance of such obligation would reasonably require more than thirty (30) days, if the Manager fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Owner or Qualified Mortgagee giving such notice may, on written notice to the Manager and each other Owner, perform such obligation in the stead of the Manager. Such Owner or Qualified Mortgagee shall be reimbursed for such performance by all Owners in accordance with each Owner's Common Expense Percentage in the same manner as if such obligation had been performed by the Manager.

4.7 Miscellaneous Duties. The Manager is hereby given the power and authority to make and enforce any and all rules reasonably related to this Declaration, including, but not limited to (1) operation, maintenance, repair, improvement, and replacement of Common Areas; (2) determination and collection of Common Expenses; (3) Assessment and collection of the proportionate share of the Common Expenses from the Owners; (4) entrance into contracts, deeds, leases and/or other written instruments or documents as may be required to fulfill the Manager's duties; (5) bringing, prosecuting, or settling litigation for itself or on behalf of any or all of the Owners, provided, however, that no such prosecution or, settlement shall be allowed without the prior written approval of Owners having greater than or equal to fifty percent (50%) of the Common Expense Percentage; (6) keeping adequate books and records; (7) the promulgation of reasonable rules and regulation pertaining to the operations of the Development, including, without limitation rules governing hours of operation, sidewalk sales, sidewalk displays, delivery hours, the playing of music outside of any building, and other such similar matters and may amend the same from time-to-time; and (7) all other acts necessary for the operation and maintenance of the Development.

4.8 Lowe's Declaration. Manager shall at all times act as the "Consenting Owner" pursuant to the Lowe's Declaration with respect to the Development, including, without limitation, with respect to any request for consent requested or required pursuant to the terms of the Lowe's Declaration. Notwithstanding anything in this Declaration to the contrary, those Parcels within the Development against which the Lowe's Declaration is not recorded are not subject to the Lowe's Declaration and any approval requirement stated herein with respect to the Lowe's Declaration shall not be applicable to such Parcels, neither shall the use restrictions set forth in the Lowe's Declaration.

4.9 Rules and Regulations. Manager shall have the right, without the approval of the Owners, to promulgate rules and regulations, and to waive, rescind, add to and amend any rules or regulations with respect to any Owner, tenant or other occupant of the Development, as Manager in its reasonable judgment shall from time to time find necessary or appropriate in order to provide for the

safety, protection, care and cleanliness of the Development, the operation thereof, the preservation of good order therein, and the protection and comfort of Owners, tenants and their employees, agents, customers and invitees, which rules and regulations, when made and written notice thereof is given to each Owner and occupant of the Development, shall be binding upon it in like manner as if originally herein prescribed, except to the extent such additional rules or regulations conflict with the express provisions of the Declaration. The amendment or waiver by Manager of any rules or regulations for the benefit of any particular Owner of the Development shall not be construed as a waiver of such rules and regulations in favor of any other Owner or tenant, nor prevent Manager from thereafter enforcing any such rules and regulations against any or all of the Owners or tenants in the Development.

5. Common Expenses.

5.1. Budget. At least annually, the Manager shall submit to each Owner a proposed budget for the Common Expenses for the following year. Each Owner shall give the Manager written notice of its approval or disapproval of such budget within thirty (30) days after receipt. No Owner shall unreasonably withhold, condition or delay its approval of such budget. If any Owner fails to give such notice within such thirty (30) day period, such Owner shall be deemed to have approved such budget. Any disapproval of such budget shall be accompanied by a reasonably detailed explanation for such disapproval. If a Majority of the Owners approve or are deemed to have approved such budget, such budget shall be approved. If a Majority of the Owners do not approve or are not deemed to have approved such budget, the Manager and all disapproving Owners shall reasonably cooperate to address and resolve the reasons for such disapproval as soon as reasonably possible so as to arrive at a budget that is approved or deemed approved by a Majority of the Owners. Whenever a budget is revised as a result of Owner disapproval, the Manager shall submit such revised budget to each Owner, and the foregoing process shall be repeated, having the ½ the time periods for approval and disapproval as stated above.

5.2. Collection The Manager is expressly authorized by each Owner to incur all costs, expenses, fees and other amounts included within the definition of "Common Expenses" set forth in Paragraph 1, and each Owner shall contribute such Owner's Common Expense Share in the manner described in this Paragraph 5. The Manager shall make reasonable, good faith efforts to collect from each Owner such Owner's Common Expense Share and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Common Expense Share on a monthly, quarterly or other periodic basis as the actual amount of the Common Expense Share becomes known (in which event the Common Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Owner in advance based on the Manager's reasonable estimate of the Common Expense Share for the period concerned, which estimate shall be provided to each Owner at least annually. If the Manager adopts the second alternative, each Owner shall pay such Owner's Common Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, the Manager shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Common Expense Share for such calendar year. If such final statement reveals that the monthly installments made by an Owner aggregate less than such Owner's Common Expense Share for such calendar year, such Owner shall pay the remaining amount owing to the Manager within thirty (30) days after such final statement is furnished. If such final statement reveals that an Owner's payments aggregate more than such Owner's Common Expense Share for such calendar year, the excess amount shall, at the option of the Manager, either be returned to such Owner or be applied by the Manager to amounts next due from such Owner under this Paragraph 5. Any amount required to be paid under this Paragraph 5 that is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of

eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Manager for any payment not made within ten (10) days after the date due. Such late charge is payable not as a penalty, but in order to compensate the Manager for the additional expense involved in handling the delinquent payment. The acceptance by the Manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by the Manager that relate to the Common Expenses shall be open to examination and audit by any Owner on at least ten (10) days' prior written notice to the Manager.

5.3. Default. If any Owner fails to perform any obligation under this Declaration and such failure continues for a period of thirty (30) days after written notice of such failure (ten (10) days in the case of any failure to make a payment when due) is given to such Owner by the Manager (or if the performance of such obligation would reasonably require more than thirty (30) days and such Owner fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion), the Manager may, on written notice to such Owner, perform such obligation in the stead of such Owner, or exercise any other right or remedy existing at law or in equity. The Manager shall be reimbursed by such Owner on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of eighteen percent (18%) per annum.

5.4. Lien. If not paid when due, the amounts payable under this Paragraph 5 and any other amounts payable to the Manager under this Declaration may be secured by a lien against the delinquent Owner's Parcel. Such lien shall be evidenced by a notice of lien recorded by the Manager in the Official Records. A copy of such notice of lien shall be given to the delinquent Owner and any Mortgagee holding a Mortgage covering such Owner's Parcel within ten (10) days following recordation. Such notice of lien shall set forth the unpaid amount, the date such amount was due, the name of such Owner and a description of the property subject to such lien, and shall be signed and acknowledged by the Manager. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of mortgages covering real property, and shall be subject and subordinate to (a) each Mortgage recorded at the time such notice of lien is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility right-of-way and easement existing at the time such notice of lien is recorded, (d) the interests of each tenant under each lease (whether recorded or unrecorded) existing at the time such notice of lien is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien is recorded.

5.5. Certain Obligations and Rights. The obligations of each Owner under Paragraph 5.2 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by the Manager or, on written notice to the Manager and each Owner, by any other Owner. No Owner may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Area, by abandonment of such Owner's Parcel or any Improvements on such Owner's Parcel or by waiver of any of the services or amenities provided for in this Declaration. Suit to recover a money judgment for any amount due may be maintained without foreclosing or waiving the lien described in Paragraph 5.4. All remedies set forth in this Paragraph 5 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for any breach may be inadequate.

6 Taxes. Each Owner shall pay, prior to delinquency, all Taxes on such Owner's Parcel, unless the collection of such Taxes and any sale or forfeiture of such Parcel for nonpayment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Parcel is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable to such Parcel shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax parcel assessed, such proportion to be determined by the Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

7. Insurance Each Owner shall maintain such insurance coverage as is required pursuant to Section 5.5 of the Lowe's Declaration and shall name the Manager as an additional insured with respect to all commercial liability insurance maintained pursuant to the foregoing requirement. With the prior written approval of the Manager, any Owner may comply with the requirements of this Paragraph by the purchase of blanket coverage or through coverage with a reputable carrier that fulfills the requirements of this Section 4.4 and Section 5.5 of the Lowe's Declaration (with respect to Parcels A, C, D, E, F, G and H only), and may elect such deductible provisions as are consistent with good business practices and comply with such requirements. Each Owner shall, on request, furnish the Manager with a certificate issued by its insurer evidencing that insurance is in force that complies with the requirements of this Paragraph.

8. Indemnification Each Owner shall indemnify, defend and hold harmless the Manager and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the indemnifying Owner, including, without limitation, those caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any part of the Development by (a) the indemnifying Owner, (b) any person leasing or occupying the Parcel owned by the indemnifying Owner, or (c) any agent, employee, contractor, invitee or licensee of either the indemnifying Owner or any person leasing or occupying the Parcel owned by the indemnifying Owner.

9. Prohibited Uses. The following uses, activities, and/or functions are prohibited in the Development:

9.1. a manufacturing facility, unless prior approval is obtained by the Manager, provided, however, that no manufacturing facility that involves outdoor storage of raw materials, noxious odors or sounds or excessive vehicular traffic shall be allowed,

9.2. a dry cleaners with on premises cleaning,

9.3. a coin-operated laundry;

9.4. a thrift store or liquidation outlet;

9.5. a bar, cocktail lounge, pub, tavern, nightclub, comedy club, music or dance hall or disco in which less than fifty percent (50%) of its space is devoted to, or in which less than fifty percent (50%) of its revenue is derived from, food service;

9.6. a church;

- 9.7. an establishment having nude or semi-nude dancing, entertainment or service providers or any other sexually oriented business;
- 9.8 a bowling alley,
- 9.9 a billiard parlor or pool room;
- 9.10. a bingo parlor;
- 9.11. a flea market;
- 9.12. a massage parlor;
- 9.13. a funeral home;
- 9.14 a facility for the sale of paraphernalia for use with illicit drugs;
- 9.15. a facility for the sale or display of pornographic or sexually explicit material, such as adult theaters or adult bookstores, as determined by community standards for the area in which the Development is located, provided, however, that the Manager, in its sole discretion, may deny the use of any facility regardless of whether community standards are met by such facility's use;
- 9.16. an off-track betting parlor;
- 9.17. a carnival, amusement park or circus;
- 9.18. a gas station, car wash or auto repair or body shop, other than a car stereo installation facility operated in connection with the retail sales of car stereos (but the foregoing will not limit auto parts stores such as Checker Auto, AutoZone, or NAPA Auto Parts);
- 9.19. a facility for the sale of new or used motor vehicles, trailers or mobile homes;
- 9.20. a facility for any use which is illegal;
- 9.21. a skating rink;
- 9.22. a training or educational facility, including, without limitation, a beauty school, barber college, reading room, place of instruction or other operation catering primarily to students or trainees rather than to purchasers of goods and services sold in the Development;
- 9.23. an arcade, pinball or computer game room, provided, however, that:
- (a) retail facilities in the Development may operate no more than six (6) such electronic games incidental to their primary operations; and
- (b) a children's activity center, such as Discovery Zone or Jungle Jim's, is not prohibited, and may have up to a maximum of fifty (50) arcade, pinball or computer games,

9.24. storage of any kind without appropriate screening, and then only with the prior written approval of the Manager;

9.25 the use or location of any outside garbage containers (dumpsters) without such being screened from the general public's view (the Manager having sole discretion as to the location of such containers) and only then when such containers are enclosed with a decorative masonry enclosure, with gates and appropriate landscaping,

9.26 loading or unloading except in designated loading areas, the location of which shall be approved in writing by the Manager in advance and shall be located in areas that are screened from public view and from public streets and rights-of-way;

9.27 the use of any outside lighting that is not approved in writing in advance by the Manager,

9.28 the addition of any landscaping, signage, or any architectural Improvement or other addition that has not been pre-approved in writing by the Manager; and

9.29 With respect to Parcels A, C, D, E, F, G and H any use prohibited pursuant to the Lowe's Declaration.

Provided, however, that the Manager may in its sole discretion waive any of the prohibited uses above and thereby allow a facility into the Development for any of the foregoing otherwise prohibited uses (except those prohibited pursuant to Section 9.29), unless Owners having equal to or greater than fifty percent (50%) of the Common Expense Percentages provide written objection to the same within forty-five (45) days of receiving notice of such intended waiver of otherwise prohibited uses.

10 Title and Mortgage Protection. Except as set forth in Paragraph 5.4, breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any part of the Development, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any part of the Development.

11 Mortgagee Protection

11.1. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Development shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful)

11.2. Notices; Right to Cure. Any Owner, on delivering to any other Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such other Owner at the latest address provided to the notifying Owner by such other Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding

sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional ten (10) days and, in the case of non-monetary defaults, an additional twenty (20) days, provided, however, that if a non-monetary default reasonably requires more than twenty (20) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such twenty (20) day period and thereafter diligently prosecutes such cure to completion.

11.3. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee, as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with the Parcel.

11.4. Recognition. On request, the Manager agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Paragraph 11

11.5. Estoppel. The Manager shall, within fifteen (15) days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificate in favor of the requesting Owner and such other persons as the requesting Owner shall designate setting forth the following.

(a) that, to the knowledge of the Manager, such Owner is not in default under this Declaration or, in the alternative, that such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;

(b) that, to the knowledge of the Manager, this Declaration is in full force and effect and has not been modified or amended, except as may be set forth in such estoppel certificate;

(c) any reasonably requested information regarding Common Expenses and liens recorded pursuant to Paragraph 5.4, to the extent that the Common Expenses and such liens relate to such Owner's Parcel; and

(d) such other information as the requesting Owner may reasonably request

The requesting Owner's Mortgagees and purchasers shall be entitled to reasonably rely on any estoppel certificate executed by the Manager pursuant to this Paragraph 11.5.

12. Covenants to Run with Land. Each provision of this Declaration shall constitute a covenant running with the land (and each Owner hereby expressly agrees that all such covenants touch and concern the land), and shall be binding on and shall inure to the benefit of the Manager and each Owner and their respective successors and assigns, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Development, and all interests in any part of the Development shall be subject to this Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the Owners or any other person on or after the date of this Declaration shall be subject to and subordinate to this Declaration, and this Declaration shall be prior and superior to

such interests and rights. By in any way coming to have any interest in or occupying any part of the Development, the person so coming to have such interest or occupying agrees to be bound by this Declaration; provided, however, that no such person shall have any right or liability under this Declaration as an Owner until such person becomes an "Owner," as defined in Paragraph 1, nor shall such person have liability under this Declaration for any acts committed prior to the time such person became an Owner.

13 Amendment.

13.1 Requisite Parties. This Declaration may be amended only by an instrument recorded in the Official Records, executed by the Manager and Owners having greater than or equal to a ninety percent (90 %) Common Expense Percentage, except as follows.

(a) any amendment to this Declaration that expands the Development to include any other real property only needs to be executed by the Manager and each Owner of such other property, and shall set forth a metes and bounds description of such other property;

(b) any amendment to this Declaration that changes the description of the Utility Easement only needs to be executed by the Manager and each Owner of the Utility Easement, as the case may be, and shall set forth the new metes and bounds description of the Utility Easement;

(c) any amendment to this Declaration that designates any Common Landscaping Area or changes the description of any existing Common Landscaping Area only needs to be executed by the Declarant and each Owner of the Common Landscaping Area concerned, and shall set forth the new metes and bounds description of the Common Landscaping Area concerned;

(d) any amendment to this Declaration that divides an existing Parcel into two or more Parcels only needs to be executed by Declarant and the Owner of the Parcel concerned, and shall set forth the metes and bounds descriptions of such new Parcels;

(e) any amendment to this Declaration that changes the descriptions of two or more Parcels only needs to be executed by the Manager and each Owner of such Parcels, and shall set forth the new metes and bounds descriptions of such Parcels; and

(f) any instrument effective as an amendment to this Declaration pursuant to which any Manager assigns its rights and duties under this Declaration to another Manager only needs to be executed by Declarant, the existing Manager (if different from Declarant) and the new Manager and, if the new Manager is an Owner, shall set forth a metes and bounds description of such new Manager's Parcel.

13.2. No Other Person Required. Unless it is a required party to the amendment concerned under Paragraph 13.1, no other person (including, without limitation, any person holding an interest in or occupying any Parcel, whether as a tenant under a lease or otherwise) needs to execute such amendment in order to make such amendment in all respects effective, valid, binding and enforceable; provided, however, that no amendment to this Declaration shall affect the rights of any Mortgagee holding a Mortgage that constitutes a lien on the realty directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. All requisite parties to an amendment shall not withhold, condition or delay the approval or execution of such amendment in a manner that is unreasonable.

14. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered

15. Release On Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any Parcel in accordance with the provisions of this Declaration, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

16. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Development may be owned by the same person from time to time, it being the intention of the Declarant to create a common scheme for the development and operation of the Development that will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 19.

17. Force Majeure The Manager and any Owner or other person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, for so long as (but only for so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Manager, the Owner or other person prevented or delayed.

18. Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions that are to apply among the Parcels and that are to define and govern the rights and obligations as between those persons interested in a given Parcel, on the one hand, and those persons interested in other Parcels, on the other. Accordingly, this Declaration shall not alter any agreements that allocate rights and obligations of persons having an interest in the same Parcel among such persons or third parties, but such agreements shall not limit the liability or obligation of any person under this Declaration.

19. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which it is recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by each Owner of the Development and the Mortgagee under each Mortgage then affecting the Development

20. Notices. Any notice or demand to be given by the Manager to any Owner or by any Owner to the Manager or another Owner shall be given in writing by personal service, telecopy (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after telecopying), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner at the address set forth for such Owner in the Official Records or in the taxing records or, if different, at another address provided by such Owner. Any Owner may change the

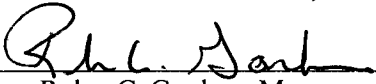
address at which it desires to receive notice on written notice of such change to the Manager and each other Owner. Any notice or demand given under this Declaration shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed, provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice

191. Interpretation. This Declaration shall inure to the benefit of, and shall be binding on, the Declarant, the Owners and their respective successors and assigns. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law, but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently or successively from time to time. The failure on the part of any person to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default

DECLARANT has executed this Declaration on the respective dates set forth below, to be effective as of the date first set forth above Declarant and all Owners agree that (i) the interests in and rights concerning each part of the Development held by or vested in the Declarant or Owners on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and (ii) the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in this Declaration.

DECLARANT.

GARDNER TOWNE CENTER, LLC, a Utah limited liability company

By 
Rulon C Gardner, Manager

State of UTAH)
) ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 16 day of January, 2013, by Rulon C. Gardner, a Manager of Gardner Towne Center, LLC.



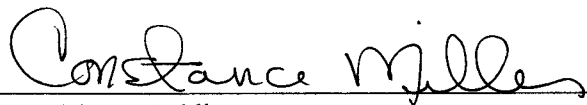

Notary Public

EXHIBIT A



to

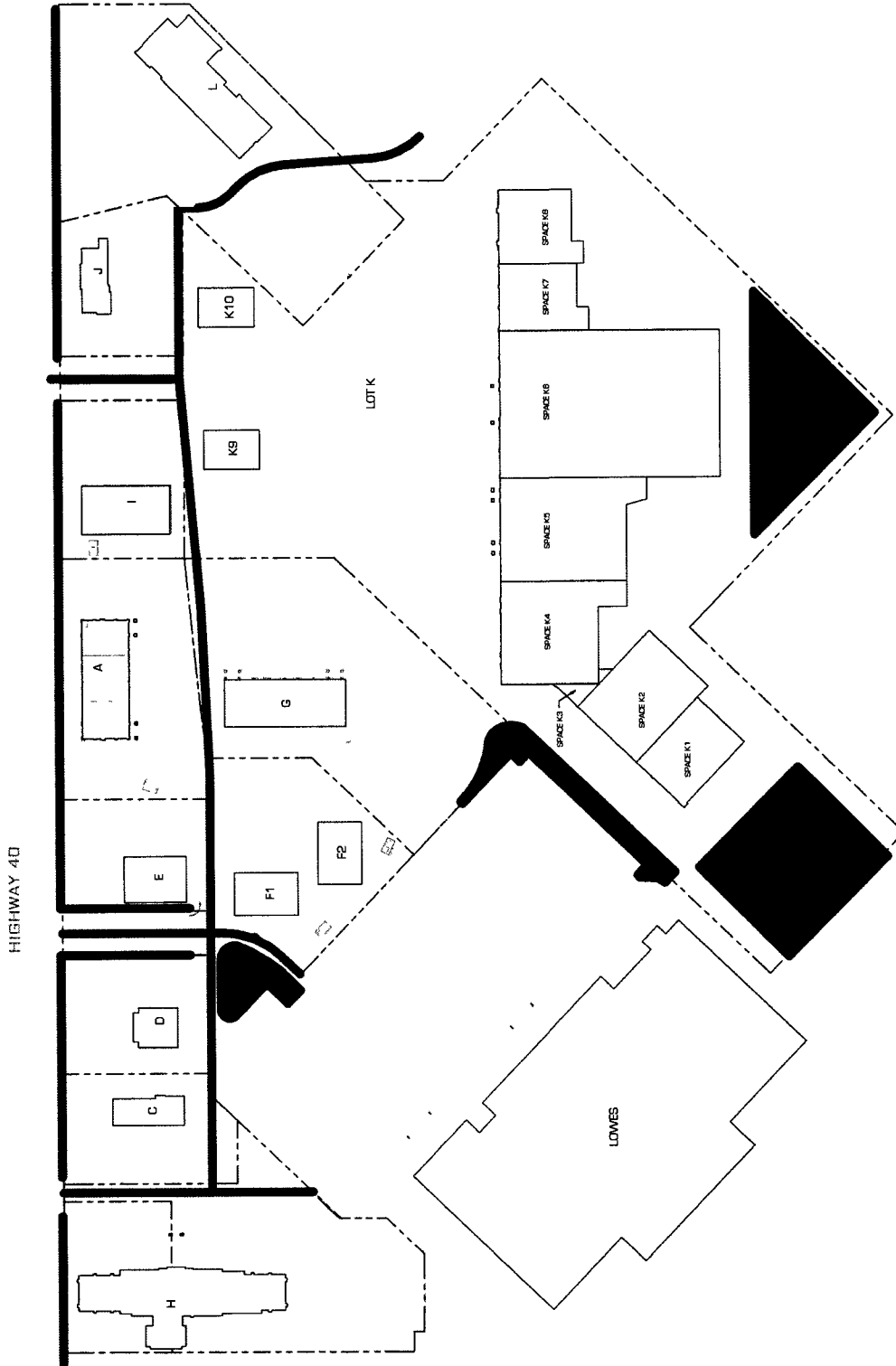
DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS

COMMON LANDSCAPING AREAS

The initial Common Landscaping Area is shown on the following attachment consisting of one (1) page.

LEGEND

	VEHICULAR & PEDESTRIAN EASEMENT
	LANDSCAPE COMMON AREA



1 VEHICULAR, PEDESTRIAN EASEMENT & LANDSCAPE COMMON AREAS

EXHIBIT B

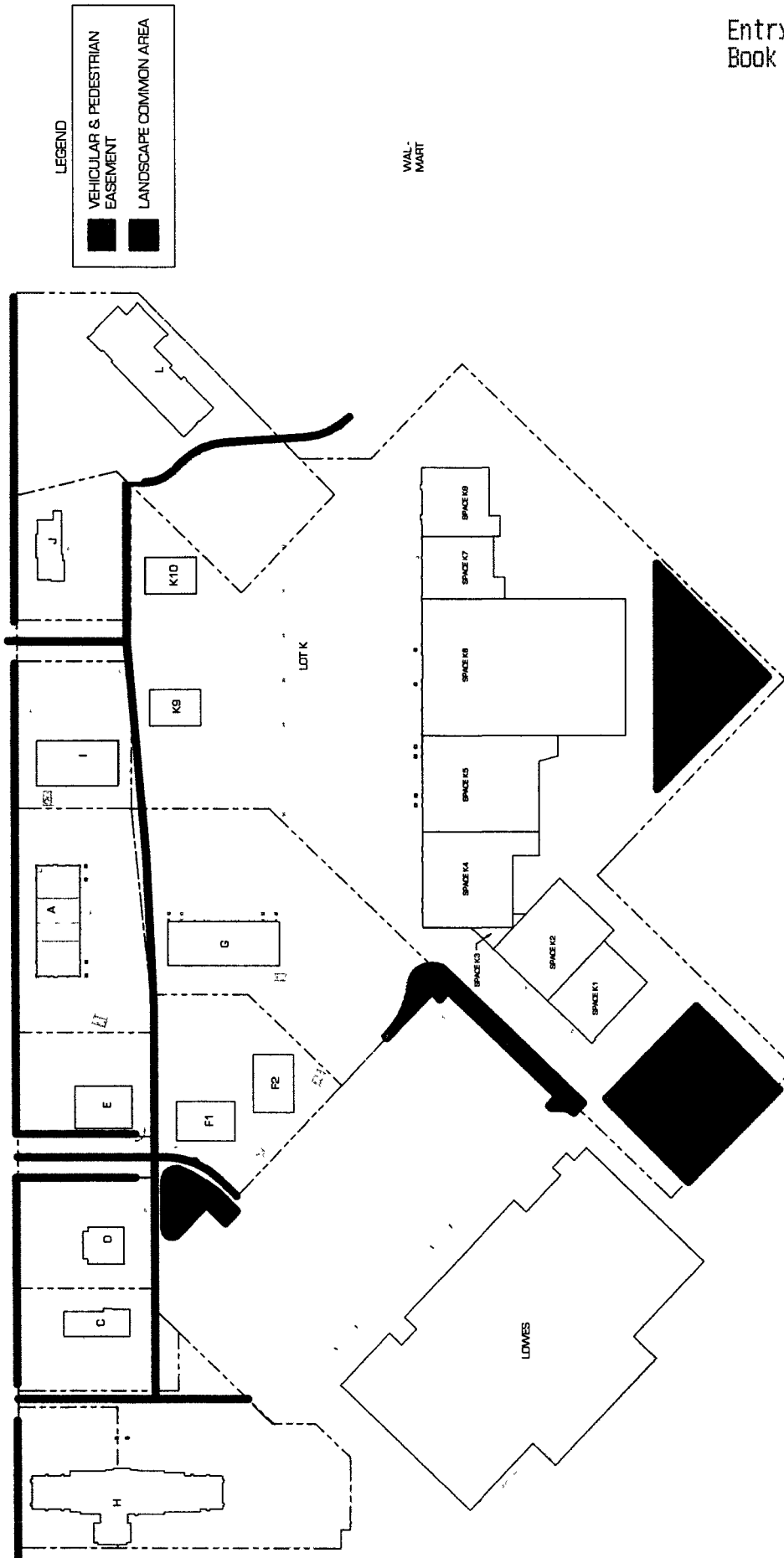
to

DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS

COMMON VEHICULAR AND PEDESTRIAN AREA

The initial Common Vehicular and Pedestrian Area is shown on the following attachment consisting of one (1) page.

HIGHWAY 40



1 VEHICULAR, PEDESTRIAN EASEMENT & LANDSCAPE COMMON AREAS

EXHIBIT C

to

DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS

LEGAL DESCRIPTION OF DEVELOPMENT

LOT A

BEGINNING AT A POINT THAT IS 1214 54 FEET N 9°47'37" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M THENCE N 45°59'50" W PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 170 99 FEET, THENCE S 44°00'10" W ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 302 23 FEET; THENCE S 45°59'50" E PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 199 20 FEET, THENCE N 44°00'10" E PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 29 33 FEET, THENCE N 38°06'04" E 274 35 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 1 294 ACRES IN AREA MORE OR LESS

LOT B

BEGINNING AT A POINT THAT IS 1014 05 FEET N 53°25'42" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M THENCE N. 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U S. HIGHWAY 40, 145.50 FEET; THENCE S 44°00'10" W. ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 204.52 FEET; THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 145 50 FEET; THENCE N 44°00'10" E. PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 204.52 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 0.683 ACRES IN AREA MORE OR LESS

LOT C

BEGINNING AT A POINT THAT IS 952 39 FEET N. 43°28'25" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M THENCE N 45°59'50" W PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 199.56 FEET, THENCE S 44°00'10" W ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 149 08 FEET; THENCE S 45°59'50" E PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 236.38 FEET; THENCE N. 44°00'10" E PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 85.62 FEET; THENCE N 2°23'02" W PARALLEL WITH THE EAST LINE OF SOUTHWEST QUARTER 50.85 FEET, THENCE N. 44°00'10" E PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY 28.38 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL CONTAINS 0 770 ACRES IN AREA MORE OR LESS

LOT D

BEGINNING AT A POINT THAT IS 952 39 FEET N 43°28'25" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M: THENCE N 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 40, 199 56 FEET; THENCE N. 44°00'10" E ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 161.66 FEET; THENCE S 45°59'50" E PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 199 56 FEET, THENCE S 44°00'10" W. PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 161.66 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 0.741 ACRES IN AREA MORE OR LESS.

LOT E

BEGINNING AT A POINT THAT IS 987.66 FEET N 30°31'02" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M. THENCE N. 44°00'10" E. PARALLEL WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 40, 151 54 FEET; THENCE N 45°59'50" W PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 199.20 FEET, THENCE S 44°00'10" W ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 151 54 FEET, THENCE S 45°59'50" E. PERPENDICULAR WITH SAID HIGHWAY RIGHT-OF-WAY LINE 199 20 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 0.693 ACRES IN AREA MORE OR LESS.

LOT F

BEGINNING AT A POINT THAT IS 987 66 FEET N 30°31'02" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M THENCE N 44°00'10" E. PARALLEL WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 180.87 FEET, THENCE N 38°06'04" E 25 96 FEET, THENCE S 45°59'50" E PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 144.01 FEET, THENCE S 2°23'02" E PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER 189 75 FEET, THENCE S 87°36'58" W PERPENDICULAR TO SAID EAST LINE OF SOUTHWEST QUARTER 224 44 FEET, THENCE N 2°23'02" W PARALLEL WITH THE SAID EAST LINE OF THE SOUTHWEST QUARTER 36 16 FEET TO THE POINT OF TANGENCY OF A CURVE CONCAVE TO THE SOUTHWEST HAVING AN INTERNAL ANGLE OF 43°36'47" AND A RADIUS OF 115 00 FEET AND AN ARC LENGTH OF 87 54 FEET, AND A CHORD DIRECTION OF N 24°11'26" W , CHORD LENGTH OF 85.44 FEET, THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 87 54 FEET, THENCE N 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 217.60 FEET, THENCE N 44°00'10" E ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 30 01 FEET, THENCE S 45°59'50" E. PERPENDICULAR WITH SAID HIGHWAY RIGHT-OF-WAY LINE 199 20 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 1 414 ACRES IN AREA MORE OR LESS

LOT G

BEGINNING AT A POINT THAT IS 1214.54 FEET N. 9°47'37" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M. THENCE N 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 170.99 FEET; THENCE N 44°00'10" E. ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 24.00 FEET; THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 372.87 FEET, THENCE S 2°23'02" E. ALONG THE EAST LINE OF THE SOUTHWEST QUARTER 353.33 FEET, THENCE S. 87°36'58" W. PERPENDICULAR TO SAID EAST LINE OF SOUTHWEST QUARTER 218.56 FEET, THENCE N 2°23'02" W PARALLEL WITH THE SAID EAST LINE OF THE SOUTHWEST QUARTER 189.75 FEET; THENCE N. 45°59'50" W. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 144.01 FEET, THENCE N 38°06'04" E. 248.39 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 2.540 ACRES IN AREA MORE OR LESS

LOT H

BEGINNING AT A POINT THAT IS 1014.05 FEET N 53°25'42" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M THENCE N 45°59'50" W PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 145.50 FEET, THENCE N 44°00'10" E ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 24.01 FEET, THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 236.38 FEET, THENCE N 44°00'10" E PARALLEL WITH THE SAID HIGHWAY RIGHT-OF-WAY LINE 85.62 FEET, THENCE S 2°23'02" E PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER 191.86 FEET, THENCE S 45°59'50" E PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 64.27 FEET; THENCE S 2°23'02" E PARALLEL WITH SAID EAST LINE OF SOUTHWEST QUARTER 70.17 FEET, THENCE S 44°00'10" W PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 105.40 FEET, THENCE N 45°59'50" W PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 13.48 FEET, THENCE S 44°00'10" W PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 28.00 FEET, THENCE N 45°59'50" W PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 331.38 FEET; THENCE N 44°00'10" E. PARALLEL WITH THE SAID HIGHWAY RIGHT-OF-WAY LINE 204.52 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 1.791 ACRES IN AREA MORE OR LESS

LOT I

BEGINNING AT A POINT THAT IS 1371.14 FEET N. 1°46'12" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M. THENCE N. 45°59'50" W. PERPENDICULAR TO THE SOUTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 40, 168.50 FEET, THENCE S. 44°00'10" W. ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 215.00 FEET; THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 168.50 FEET, THENCE N. 44°00'10" E. PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 215.00 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 0.831 ACRES IN AREA MORE OR LESS.

LOT J

BEGINNING AT A POINT THAT IS 1413.64 FEET N 0°01'38" W. FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M. THENCE N. 44°00'10" E PARALLEL WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 195.92 FEET; THENCE N 2°23'02" W PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER 29.40 FEET, THENCE N 59°26'44" W. 151.36 FEET; THENCE S. 44°00'10" W ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 181.00 FEET; THENCE S. 45°59'50" E. PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 168 50 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL CONTAINS 0 772 ACRES IN AREA MORE OR LESS.

LOT K

BEGINNING AT A POINT THAT IS 1413.64 FEET N 0°01'38" W FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SLB&M THENCE N 44°00'10" E PARALLEL WITH THE SOUTHEAST RIGHT-OF-WAY LINE OF U S HIGHWAY 40, 195.92 FEET, THENCE S 2° 23'02" E PARALLEL WITH THE EAST LINE OF SOUTHWEST QUARTER 225 60 FEET, THENCE N 88°08'17" E PERPENDICULAR TO THE SAID EAST LINE OF SOUTHWEST QUARTER 466 73 FEET, THENCE S 2°12'24" E 660 81 FEET; THENCE S 88°01'05" W 410 68 FEET, THENCE S 2°23'02" E PARALLEL WITH SAID EAST LINE OF SOUTHWEST QUARTER 441 63 FEET, THENCE S 88°01'51" W 254 00 FEET, THENCE N 2°23'02" W ALONG THE EAST LINE OF THE SOUTHWEST QUARTER 854 79 FEET, THENCE N 45°59'50" W PERPENDICULAR TO THE SAID RIGHT-OF-WAY LINE 204 37 FEET, THENCE N 44°00'10" E PARALLEL WITH SAID HIGHWAY RIGHT-OF-WAY LINE 215 00 FEET, THENCE N. 45°59'50" W PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 168 50 FEET, THENCE N 44°00'10" E. ALONG THE SAID HIGHWAY RIGHT-OF-WAY LINE 60 00 FEET, THENCE S 45°59'50" E PERPENDICULAR TO THE SAID HIGHWAY RIGHT-OF-WAY LINE 168 50 FEET TO THE POINT OF BEGINNING THE ABOVE DESCRIBED PARCEL CONTAINS 13 967 ACRES IN AREA MORE OR LESS

EXHIBIT D

to

DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS

RECORD OF SURVEY

The Record of Survey for the Development, including the Parcels comprising the Vernal Towne Center (i.e. Lots A through K) is shown on the following attachment consisting of one (1) page.

