

AFTER RECORDING, PLEASE RETURN TO:

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Salt Lake City, UT 84111

Tax Parcel Nos.: 65-716-0101
65-716-0102

(Space above for Recorder's use only.)

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "**Declaration**"), dated as of April 12th, 2024, is executed by COLD SPRING RETAIL, L.C., a Utah limited liability company ("**Declarant**").

RECITALS:

A. Declarant owns certain parcels of real property, the legal descriptions of which are set forth on Exhibit "A" attached hereto and made a part hereof.

B. Declarant desires to establish certain covenants, restrictions and easements for each of the respective Parcels (defined below), all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant makes the following declarations, creates the following easements and establishes the following covenants and restrictions, all of which apply to, bind, affect and run with title to each of the Parcels.

1. Definitions. Certain terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following terms shall have the meanings indicated.

(a) "**Access Areas**" shall mean the areas within each Parcel intended to be used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians but does not include any portion of a Parcel on which a Building or Related Improvement is located at any time from time to time.

(b) "**Approving Party**" shall mean the Owner designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this

(b) **“Approving Party”** shall mean the Owner designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Declaration. There shall be one (1) Approving Party for each Parcel. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position. In the event of a subdivision of a Parcel, (a) all such subdivided Parcels shall have only one (1) Approving Party and such subdivision shall not create additional Approving Parties, (b) the Approving Party for such subdivided Parcel shall be either (i) designated by the Owner of such subdivided Parcel in a writing which designation shall be delivered to each of the other Owners and shall be recorded in the Utah County Recorder’s Office at the time of the subdivision of such Parcel, or (ii) if such designation is not made in accordance with the provisions of subsection (i) above, the Approving Party shall be the Owner of the largest subdivided portion of such Parcel.

(c) **“Benefitted Parties”** means, with respect to a Parcel, the Owners and Occupants of that Parcel, and their respective employees, customers, guests, invitees and licensees.

(d) **“Budget”** shall have its meaning set forth in Section 5(d)(vi).

(e) **“Budget Objection Notice”** shall have its meaning set forth in Section 5(d)(vii).

(f) **“Building or Related Improvement”** means a building or other principal structure on a Parcel (including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items).

(g) **“Common Area”** means, collectively, the Access Areas, the Parking Areas, the Improvements, the Common Utility Lines, and the Storm Water Facilities.

(h) **“Common Area Maintenance Costs”** shall have its meaning set forth in Section 5(d)(iii).

(i) **“Common Utility Lines”** shall mean those Utility Lines which are installed to provide the applicable service to more than one Parcel.

(j) **“Cost Allocation Ratio”** shall mean each Owner’s share of Common Area Maintenance Costs, which share shall be a percentage determined by a fraction, the numerator of which is the gross square footage of the Building or Related Improvements constructed on such Owner’s Parcel, and the denominator of which is the gross square footage of all Buildings and Related Improvements constructed on all of the Parcels. In the event of a subdivision of a Parcel, the Cost Allocation Ratio shall be allocated to each subdivided portion of such Parcel as agreed between the Owners of such Parcel and evidenced by a supplement to this Declaration which is recorded in the Utah County Recorder’s Office (and a copy of such recorded document shall be delivered to the Manager); provided, however, in the event no such supplement is recorded, the Cost

Allocation shall be proportionately allocated to each subdivided Parcel based on the square feet contained in each subdivided Parcel.

(k) “**Deadlock**” shall have its meaning set forth in Section 16(a).

(l) “**Governmental Authorities**” means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a Parcel or its use, operation, maintenance or development.

(m) “**Improvements**” means all improvements, of whatever kind or character, within the Access Areas and Parking Areas, including, without limitation, any landscaping, driveways, walkways, exterior lighting, striping, curbs, retaining walls, screening walls and signs.

(n) “**Index**” means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the “**Bureau**”) “All Items” for All Urban Consumers, U.S. City Average (1982–84 = 100). Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as agreed to by each of the Owners will be substituted therefor.

(o) “**Laws**” means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Parcels and the Building or Related Improvement from time to time in effect.

(p) “**Management Fee**” shall have its meaning set forth in Section 5(d)(iv).

(q) “**Manager**” shall have its meaning set forth in Section 5(d)(i).

(r) “**Mortgage**” means a recorded mortgage, deed of trust or other security agreement creating a lien on an Owner’s interest in a Parcel or a portion of a Parcel as security for the payment of indebtedness.

(s) “**Mortgagee**” means the mortgagee, beneficiary or other secured party under a Mortgage.

(t) “**Occupant**” means any Person that, by virtue of a contract, a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or portion of any Parcel.

(u) “**Owner**” means the Person that, at the time concerned, is the owner of record in the office of the County Recorder of Utah County, Utah, of a fee interest in any Parcel or portion of any Parcel. In the event that, at any time, more than one Person owns the fee interest in a Parcel, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage,

deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee’s sale or any arrangement or proceeding in lieu thereof.

(v) **“Owner’s Project Monument Sign Percentage”** means, for each Person that has a Sign Panel on the Project Monument Sign, a fraction, the numerator of which is the number of square inches of the Sign Panel of such Person, and the denominator of which is the total number of square inches of all Sign Panels on the Project Monument Sign.

(w) **“Parcel”** means any one of the Parcels described in Exhibit “A”.

(x) **“Parcels”** means the Parcels described in Exhibit “A”.

(y) **“Parking Areas”** means the areas on any Parcel that are used at any time and from time to time for parking in conformance with this Declaration.

(z) **“Performing Owner”** means the Owner or Manager that performs any installation, operation, maintenance, repair or replacement of any Utility Lines.

(aa) **“Person”** means a natural person or a legal entity.

(bb) **“Project Monument Sign”** means the monument sign, the location of which is depicted as “S1” on Exhibit “C”.

(cc) **“Project Monument Sign Operating Cost”** means the costs and expenses incurred by the Manager in connection with the operation, maintenance, repair and replacement of the Project Monument Sign, including, without limitation, all license fees, taxes, utility costs, and insurance premiums.

(dd) **“Separate Utility Lines”** shall mean those Utility Lines which are installed to provide the applicable service to only one Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a single Building shall be considered a Separate Utility Line.

(ee) **“Sign Panel”** means an advertising panel on the Project Monument Sign.

(ff) **“Plat”** means the Cold Spring Retail Plat A, as recorded in the office of the Utah County Recorder on July 27, 2023, as Entry No. 48595:2023, a copy of which is attached hereto as Exhibit “B”.

(gg) **“Storm Water Facilities”** means the drainage and related storm water improvements located in the storm drainage easement shown on the Plat.

(hh) **“Utility Corridor”** shall mean the utility easements shown on the Plat.

(ii) “**Utility Lines**” means those facilities and systems for transmissions of utility services, including, but not limited to, storm water drainage and storage systems or structures or both; fire protection, irrigation and domestic water mains and manholes; lift stations; sewer lines and systems; fire and landscape water sprinkler systems (including without limitation, fire risers); telephone lines and manholes, electrical conduits or systems, gas mains and other public or private utilities.

2. Grant of Easements. Declarant hereby creates the following easements appurtenant to each Parcel for the benefit of the Benefitted Parties of each of the other Parcels, which easements shall be appurtenant to each of the other Parcels:

(a) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Common Areas on each Parcel for pedestrian use by the Benefitted Parties of each other Parcel.

(b) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across those portions of the Access Areas on each Parcel suitable for vehicular ingress and egress for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties of each other Parcel. All Building or Related Improvements constructed on any Parcel shall be developed to comply with the Laws governing access for the use proposed for the Parcel.

(c) A reciprocal, non-exclusive, perpetual easement for vehicular parking in the Parking Areas on each Parcel for the purpose of furnishing the right of parking for the vehicles of the Benefitted Parties of each other Parcel. Notwithstanding the foregoing, (i) the parking area on any Parcel shall provide at least such number of parking stalls as required to comply with Laws or as may be required by Governmental Authorities to provide for all required parking for the Building or Related Improvements located on such Parcel, without regard to any parking that may be available on any other Parcel, and (ii) each Owner shall have the right to designate a maximum of five (5) parking stalls on its Parcel for the exclusive use of such Owner’s Occupants and to place such signs as may be permitted by Laws to designate such exclusive use. All Building or Related Improvements constructed on any Parcel shall be developed to comply with the Laws governing parking for the use proposed for the Parcel. No Parcel shall be developed in so intense a manner as to have a material and adverse impact on the parking available on the other Parcels without the express written agreement by the Owners of the adversely affected Parcel[s].

(d) The installation, operation, maintenance, inspection, repair, replacement and relocation in the Utility Corridor of Utility Lines serving any part of the Parcels, all of which (except hydrants and transformers and other installations as may be requested by the utility company) will be even with or below the surface of the Utility Corridor or as otherwise agreed by the Owner of the burdened Parcel. All Owners will cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement and relocation of the Utility Lines. The location of the Utility Lines shall be within the Utility Corridor unless otherwise agreed to by the Owner on whose Parcel such Utility

Line is being placed. Each Owner will have the right to enter upon any portion of the Parcels constituting the Utility Corridor and the areas immediately adjacent thereto as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, inspection, repair, replacement and relocation of the Utility Lines subject to compliance with the following:

(i) The installation, operation, maintenance, inspection, repair and replacement of such Utility Lines (A) shall not unreasonably interfere with the use of the improved Parcel or with the normal operation of any business in each Parcel, (B) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Lines, (C) shall not reduce or unreasonably impair the usefulness or functionality of the Utility Lines of the other Owners, (D) shall be performed without cost or expense to the Owner or Benefitted Party of any other Parcel, (E) shall be performed in a good and workmanlike manner, with due care, and in compliance with all Laws and (F) shall not unreasonably interfere with the pedestrian and vehicular access or parking. For non-routine maintenance and repair that will impact the utilization of the Utility Lines of the other Owners, the Performing Owner shall provide written notice to the other Owners prior to performing any such non-routine maintenance and repair.

(ii) To the extent any construction, maintenance, inspection, repair or replacement relates to Separate Utility Lines, the Owner of the benefitted Parcel shall, (A) to the extent applicable, comply with Section 3 of this Declaration; (B) repair to the original specifications any damage to any Building, signs, Common Utility Lines or Parcel resulting from such installation, operation, maintenance, inspection, repair and replacement; and (C) shall provide as-built plans for all such Separate Utility Lines to the Owners of all Parcels upon which such Separate Utility Lines are located within thirty (30) days after the date of completion of construction of same. All costs associated with the installation, operation, maintenance, inspection, repair and replacement of Separate Utility Lines shall be borne solely by the Owner of the Parcel served thereby.

(iii) All costs associated with the installation, operation, maintenance, inspection, repair and replacement of Common Utility Lines shall be allocated among the Owners of the Parcels in accordance with the Cost Allocation Ratio. The installation, operation, maintenance, inspection, repair and replacement of Common Utility Lines may be performed by the Owner of any Parcel served thereby. The Performing Owner shall bill the Owner(s) of the other Parcel(s) served thereby for each such Owner's proportionate share in accordance with the Cost Allocation Ratio of the costs incurred by the Performing Owner not more often than monthly in arrears and such costs shall be payable within thirty (30) days after receipt of an invoice therefor and, if requested, reasonable supporting documentation. If no Owner performs such work related to Common Utility Lines, then the Manager shall perform the work in accordance with Section 5(d) below.

(iv) At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line which is then located on such Owner's Parcel, provided that any such relocation (A) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (B) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (C) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (D) shall be performed without cost or expense to the Owner or Benefitted Party of any other Parcel, (E) shall provide for the original and relocated area to be restored to a condition that is equal to or better than the condition prior to such work being completed, and (F) shall not unreasonably interfere with the pedestrian and vehicular access or the Parking Areas. At any time and from time to time the Owner of a Parcel may relocate onto its Parcel any Separate Utility Lines serving such Owner's Parcel that are then present on the other Owner's Parcel, provided that in relocating such separate Utility Lines, the Owner relocating the Separate Utility Lines shall comply with subsections (A), (D) and (F). Further, if the Utility Lines on the other Parcel are accessed or the surface of the other Parcel is disturbed in such relocation, the original area shall be restored to a condition that is equal to or better than the condition prior to such work being completed. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(e) No Owner shall interrupt, damage, or otherwise interfere with the Separate Utility Lines of any other Owner. Notwithstanding the foregoing provisions of this Section 2 to the contrary, each Owner hereby reserves the right to eject from the Common Areas designated for the use by others on its Parcel any Persons not authorized to use the same. In addition, each Owner reserves the right to close off the Common Areas designated for the use by others on its Parcel for such reasonable periods of time as may be required for serious security situations or legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, before closing off any part of the Common Areas designated for the use by others as provided above, such Owner must give notice to the other Owners of its intention to do so and must coordinate its closing with the activities of each of the other Owners so that no unreasonable interference with the operation on the other Parcels.

3. Alteration, Relocation or Changes to Access Areas and Parking Areas. The Owner of a Parcel shall be permitted to alter, relocate or change the configuration of the Common Areas on the Parcel which it owns at any time and from time to time but only upon strict compliance with the provisions of this Section.

(a) Any proposed alteration, relocation or other change shall comply with all Laws.

(b) Any proposed alteration, relocation or other change shall not, without the prior written consent of all Owners and Manager:

(i) Permanently reduce the number of parking stalls located on a Parcel (and no reduction shall reduce parking below the requirements of all Laws);

(ii) Unreasonably impact the rights of the Benefitted Parties of the other Parcels, including any rights pursuant to leases, licenses or other similar arrangements;

(iii) Materially increase the amount of Common Area that the Manager is required to maintain; or

(iv) Modify or unreasonably obstruct any Access Areas providing direct access between any Parcel and a public roadway.

(c) The Owner proposing to make any alteration, relocation or other change shall pay the entire cost of such alteration, relocation or change.

(d) The Owner proposing to make such alteration, relocation or change may not perform any work on, or stage any work from, any other Parcel without the consent of the Owner of the other Parcel, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with obtaining such consent, the Owner proposing to make such alteration, relocation or change shall provide copies of its preliminary plans to the Owner of the other Parcel prior to commencing such work for review and approval by the Owner of the other Parcel, which consent shall not be unreasonably withheld, conditioned or delayed. In the event an Owner (the “**Submitting Owner**”) submits a preliminary plan to the Owner of the other Parcel (the “**Consenting Owner**”) for its consent as required by this subsection (d), such preliminary plan shall be deemed approved if not disapproved in writing within twenty (20) days of the delivery of the preliminary plans to the Consenting Owner. In the event a Consenting Owner disapproves of such preliminary plans, the Consenting Owner shall, within such twenty (20) day period, deliver to the Submitting Owner the Consenting Owner’s written objections to the preliminary plans which objections shall include a reasonably detailed description of what changes, if made, would cause the Consenting Owner to give its approval of the preliminary plans. The Submitting Owner shall, to the extent the Submitting Owner agrees with the Consenting Owner’s requested changes, revise the preliminary plans and resubmit them to the Consenting Owner for its approval in accordance with the procedures set forth above in this subsection (d). Notwithstanding the foregoing to the contrary, an Owner shall not be required to obtain the consent of the other Owners to make any alteration, relocation or modification on such Owner’s Parcel if such alteration, relocation or modification is required by Law, provided, the Owner making such alteration, relocation or modification shall give each of the other Owners at least thirty (30) days prior written notice of such change.

(e) The Owner proposing to make any alteration, relocation, or other change shall construct and complete such alteration, relocation, or change in a diligent and timely manner subject only to delays beyond the reasonable control of the Owner. At least thirty (30) days prior to any major work in the Parking Areas or Access Areas, the applicable

Owner shall give notice to each of the Owners of the scope thereof, and the proposed commencement and completion dates.

4. Insurance and Indemnification.

(a) Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah on its Parcel a policy or policies of (i) commercial general liability, bodily injury, personal injury and property damage liability insurance (“**CGL Insurance Policy**”) with combined single limits of at least Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate (which such limit will be increased on January 1, 2030, and on every fifth anniversary of such date (each an “**Adjustment Date**”), by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date)) and (ii) replacement cost property insurance on each Building or Related Improvement.

(b) Each Owner shall name the other Owners as an additional insured under the CGL Insurance Policy described above.

(c) Each Owner shall, upon the reasonable request thereof from any other Owner, furnish to the Person making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article.

(d) Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver.

(e) If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then the other Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the other Owner may do so and may then invoice the defaulting Owner for the expense incurred.

(f) The Owner of each Parcel hereby agrees to indemnify, defend and hold harmless the Owners and the Occupants of the Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the negligent or willful act or omission of the indemnifying person, its tenants, subtenants, agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

5. Operation and Maintenance of the Parcels.

(a) Taxes and Assessments.

(i) Each Owner will pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Parcels including any Common Areas located upon such Parcel. For purposes of this Declaration, "Taxes" will mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any Governmental Authority upon the land within each Parcel and/or any Improvements therein or thereon.

(ii) Each Owner will have the right, in good faith, to contest the amount of Taxes owing with respect to its Parcel; provided that such Owner will take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within each Parcel, including recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

(b) Subject to the provisions of Section 5(d) below, each Owner, at its own cost and expense, will maintain, or cause to be maintained, its Parcel (including, without limitation, the Building or Related Improvements, but excluding the Common Areas maintained by the Manager pursuant to Section 5(d) below) in a safe, clean, attractive, tenantable first-class condition.

(c) Each Owner will be solely responsible for obtaining and paying for all utilities and services required and used on its Parcel; provided, however, any such utility costs which are attributable to the Common Areas will be paid by the Manager and reimbursed by the Owners as Common Area Maintenance Costs.

(d) Joint Maintenance of the Common Areas.

(i) At all times while Gardner-Plumb, L.C. and/or K.C. Gardner Company, L.C., is a direct or indirect owner of a Parcel, unless otherwise agreed to in writing by Declarant, the manager (the "Manager") shall be Declarant or an entity affiliated with or controlled by Gardner-Plumb, L.C. and/or K.C. Gardner Company, L.C. If neither Gardner-Plumb, L.C. nor K.C. Gardner Company,

L.C., is a direct or indirect owner of any Parcel, then the Approving Parties shall appoint a single Person, which may be an Owner or another third party, to serve as the Manager, and such Manager shall enter into a separate agreement with the Owners pursuant to which such Manager agrees to perform the obligations of Manager under this Declaration. Such separate agreement shall be in form and substance acceptable to the Approving Parties.

(ii) Prior to Manager commencing any operation and/or maintenance duties, Manager shall obtain, and thereafter maintain while continuing to be Manager, the following insurance coverages: (A) a CGL Insurance Policy with combined single limits of at least Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate (which such limit will be increased on each Adjustment Date by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date)), (B) worker's compensation insurance in accordance with applicable Law, (C) employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease, and (D) automobile liability insurance for owned, hired and non-owned automobiles with limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The costs of maintaining such insurance shall be included as Common Area Maintenance Costs (as defined below). All such insurance shall name each of the Owners as additional insureds.

(iii) Manager shall operate and maintain the Common Areas on the Parcels in accordance with the requirements of this Declaration. Each of the Owners hereby grants to Manager, its agents, contractors and employees, a license to enter upon its Parcel for the purposes of performing Manager's duties hereunder. Manager shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Areas on the Parcels ("**Common Area Maintenance Costs**") and for the performance of other obligations imposed on Manager pursuant to this Declaration, and shall promptly pay all such costs when incurred. In connection with performing its obligations under the Declaration, Manager may hire or subcontract with third Persons, provided, if such Persons are affiliated with Manager such contracts must be on terms similar to those obtained on an arm's length basis.

(iv) Each Owner agrees to pay its proportionate share of Common Area Maintenance Costs actually incurred during each calendar year, plus a management fee payable to Manager in the amount equal to five percent (5%) of all of the Common Area Maintenance Costs (the "**Management Fee**"). The Management Fee shall be included in the Common Area Maintenance Costs. The portion of the Common Area Maintenance Costs which each Owner is obligated to pay shall be calculated by multiplying the Common Area Maintenance Costs

by the Cost Allocation Ratio attributable to such Owner. Each Owner shall pay to Manager in equal monthly payments, in advance, on the first day of each calendar month, such Owner's share of Common Area Maintenance Costs (as calculated pursuant to this subsection) based upon the amount set forth in the approved Budget, or the Budget from the prior calendar year plus a five percent (5%) increase if the Budget for the current calendar year has not been approved in accordance with Section 5(d)(vi) below.

(v) Common Area Maintenance Costs shall not include: (A) any late charges or fees or any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation of Laws by Manager or anyone else acting by, through or under Manager, relating to the Parcels; (B) any charge for electricity for Building accent lighting or architectural features, or any Building security lighting; additionally, any charge for electricity to an Owner that separately pays the cost of power to illuminate the Common Area on its Parcel; (C) any charge for water to an Owner that separately pays the cost of water for irrigating the landscaping upon its Parcel; (D) any costs for promotional, marketing, seasonal or holiday events of any type; (E) any costs to clean up or repair the Common Areas on the Parcels resulting from any construction, maintenance or replacement of Owner's Building(s); (F) any costs associated with trash and/or garbage removal from an Owner's Building(s), such removal obligation being the responsibility of such Owner; (G) any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, site improvements, signs, trees, plants or other landscaping; (H) any costs of maintaining insurance required by Section 4 of this Declaration, which costs shall remain the responsibility of the applicable Owner; (I) any Taxes which shall remain the responsibility of the applicable Owner; (J) Manager's profit, administrative and overhead costs (other than the Management Fee); and (K) any fee or charge relating to the management and/or supervision of the operation of the Common Area on the Parcels, or any part thereof, paid to a third party, commercial management company or similar provider (unless such party is designated as the Manager hereunder, in which case such party shall be entitled to the Management Fee).

(vi) No later than sixty (60) days prior to the commencement of a calendar year, Manager shall provide each of the Approving Parties an estimated budget for the next succeeding calendar year (the "**Budget**"). If an Approving Party believes the charge for a particular line item in the Budget is excessive, such Approving Party shall notify Manager of such belief, and thereupon Manager shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder shall be utilized as soon as the contract with the existing provider can be terminated without penalty. Notwithstanding the foregoing, Manager shall not be required to accept a low bid pursuant to this subsection if Manager has a commercially reasonable basis for not accepting it. The Budget shall reasonably identify each of the categories of Common Area Maintenance Costs to be incurred by Manager.

(vii) If an Approving Party disapproves of the proposed Budget, such Approving Party shall give written notice to Manager within thirty (30) days of Manager's delivery of such Budget (the "**Budget Objection Notice**"), which Budget Objection Notice shall include a reasonably detailed description of what changes, if made, would result in such Approving Party approving the proposed Budget. If a Budget Objection Notice from two (2) Approving Parties is not delivered to Manager within such thirty (30) day period, the Budget shall be deemed approved. If a Budget Objection Notice is delivered to Manager within such thirty (30) day period, Manager shall revise the Budget and resubmit the Budget to the Approving Parties for their approval in accordance with the procedure set forth above. If a Budget for the next calendar year is not approved by December 15th of a calendar year, until the approval of the Budget for such next calendar year the Budget from the prior calendar year shall be used, plus an increase of five percent (5%) for each line item. In the event the Approving Parties and Manager cannot agree on a Budget, a Deadlock shall be deemed to exist, which Deadlock shall be resolved in accordance with Section 16 hereof.

(viii) Manager shall use its commercially reasonable efforts to operate and maintain the Common Areas on the Parcels in a first-class condition. Manager shall have the right to make emergency repairs to the Common Area on the Parcels to prevent injury or damage to Persons or property, it being understood that Manager shall nevertheless advise the Owners of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$20,000.00 (which amount shall be adjusted on each Adjustment Date calculated by multiplying the then applicable amount by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date), then Manager shall submit a supplemental billing to each Owner, together with evidence supporting such cost, and each Owner shall pay its share thereof (calculated in accordance with subsection 5(d)(iv) above) within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of Common Area Maintenance Costs for that year.

(ix) Within one hundred twenty (120) days after each calendar year, Manager shall furnish each Owner with a written reconciliation statement comparing the actual Common Area Maintenance Costs paid by Manager during the previous calendar year against the amounts paid by such Owner during the previous calendar year. If the annual reconciliation statement indicates that Common Area Maintenance Costs paid by an Owner for any year exceeded the actual Common Area Maintenance Costs owing by an Owner during such year, Manager shall promptly pay the amount of such excess to each applicable Owner. If the annual reconciliation statement indicates that Common Area Maintenance Costs paid by an Owner for any year is less than the actual Common Area Maintenance Costs owing by such Owner for such calendar year, each such Owner shall pay to Manager any

such deficiency within thirty (30) days of such Owner's receipt of such reconciliation statement.

(x) For a period of one (1) year after the date of receipt of a reconciliation statement, each Owner shall have the right to audit Manager's books and records pertaining to the operation and maintenance of the Common Area on the Parcels for the calendar year covered by such reconciliation statement. An Owner shall notify Manager of such Owner's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of Common Area Maintenance Costs, or any allocation thereof to a particular Owner, the auditing Owner shall provide Manager with a copy of the audit, and an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Owner unless such Owner shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Manager as such Owner's share for the applicable calendar year, in which case Manager shall pay the cost of such audit. If Manager disputes such audit, Manager and the auditing Owner shall work in good faith to resolve such dispute. If such dispute shall not have been settled by agreement, the parties to the dispute shall submit the dispute to arbitration within ninety (90) days after the delivery of the results of the audit. Pending the determination of such dispute by agreement or arbitration as aforesaid, each Owner shall continue to pay Common Area Maintenance Costs in accordance with Manager's statement, and such payment shall be without prejudice to such Owner position. If the dispute shall be determined in an Owner's favor, Manager shall, within thirty (30) days of the dispute, refund to the Owner the amount of any overpayment. Manager agrees to grant each Owner reasonable access to Manager's books and records for the purpose of verifying the Common Area Maintenance Costs.

(xi) If not paid when due, the amounts payable under this Section 5(d) 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 Parcel 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.

(xii) The provisions of this Section 5(d) are for the benefit of the Owners and Manager only, and no other Person shall be entitled to enforce the provisions of this Section 5(d) against the Owners.

6. Signage Rights.

(a) Declarant hereby reserves to the Declarant, a perpetual, non-exclusive easement, for the purpose of ingress and egress over the Parcels for the construction, use, maintenance, operation, repair and replacement of the Project Monument Sign, together with an exclusive easement for use of the areas within ten (10) feet of the base of the Project Monument Sign. Declarant may, at any time, assign all or a portion of the rights granted to Declarant under this Section 6(a) to Manager and/or any one or more of the Owners or other Person.

(b) The Project Monument Sign shall be a monument type sign as permitted by Governmental Authorities, and, each Owner or other Person advertising on the Project Monument Sign shall be determined in writing in the sole discretion of the Declarant. At any time and from time to time, Declarant may grant to an Owner or other Person a written license agreement permitting such Owner or other Person to use one or more Sign Panels on a specified Project Monument Sign on such terms and conditions, but subject to this Declaration, as the Declarant shall establish at its sole discretion.

(c) From and after the date an Owner or other Person places its Sign Panel on a Project Monument Sign, the Manager may invoice the Owner, on a regular monthly, quarterly or annual basis, as the Manager determines, the Owner's Project Monument Sign Percentage of the Project Monument Sign Operating Costs and such Owner shall be obligated to pay Manager for such amounts. Each Owner or other Person that is obligated to pay the Owner's Project Monument Sign Percentage of the Project Monument Sign Operating Costs for a Project Monument Sign shall pay such costs within fifteen (15) days after receipt of an invoice therefor from the Manager or Declarant.

(d) Each Owner, or to the extent an Owner has granted such right to another Person, such Person, shall maintain, repair and replace the individual Sign Panels located on the applicable Project Monument Sign. With the exception of the individual Sign Panels on such Project Monument Sign the Manager shall operate and maintain, at the cost and expense of the Owners and Occupants advertising on such Project Monument Sign pursuant to Section 6(c), all other parts of the Project Monument Sign, including related utilities, landscaping, illumination and irrigation, if any, in accordance with applicable Governmental Requirements.

7. Casualty.

(a) If any Building or Related Improvement or other Improvement situated on a Parcel is damaged or destroyed by any casualty, and without limiting the indemnification obligations of the Owners under Section 4 above, the Owner upon whose Parcel such Building or Related Improvement or other Improvement is situated will

promptly (i) repair and/or reconstruct such Building or Related Improvement or other Improvement and also promptly remove debris and keep the affected portions of the Parcel neat, orderly and well maintained and covered during such repair or reconstruction; or (ii) promptly demolish the Building or Related Improvement and remove the debris and keep the Parcel (including the demolition area) neat, orderly and well maintained.

(b) Upon any damage or destruction to the Common Area on a Parcel, and without limiting the indemnification obligations of the Owners under Section 4 above, the Manager will promptly after the occurrence of such event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area, and the costs of such restoration, repair, or rebuild shall be included as a Common Area Maintenance Cost. The Manager will use all commercially reasonable due diligence to complete such restoration and repair of the Common Area as expeditiously as possible with as little delay and as little disruption as circumstances permit.

8. Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of a Parcel, that portion of the award attributable to the value of the interest in the Parcel so taken will be payable to the Owner of such Parcel and no claim thereon will be made by any other Owner; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim will reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of a Parcel to be taken will promptly repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner.

9. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in this Declaration shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

10. Title and Mortgage Protection.

(a) No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

(b) A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this

Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration.

11. Estoppel. Each Owner shall, within fifteen (15) days after request from any other Owner, execute and deliver to the requesting Owner a written declaration certifying that (i) such Owner is not in default under this Agreement; (ii) to such Owner's knowledge, there are no defaults by any other Owner under this Agreement; and (iii) all costs and expenses due under this Agreement have been paid. Each Owner's Mortgagee and prospective purchasers shall be entitled to rely on such certification.

12. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated, but only by an instrument filed for record in the office of the County Recorder of Utah County, Utah that is executed by all of the Owners of the Parcels. The term of this Declaration is perpetual regardless of any change of ownership of the Parcels or the removal, alteration or destruction, in whole or in part, of a Building or Related Improvement; this Declaration shall be and remain in force and effect until terminated pursuant to this Section.

13. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner and any Person who acquires or comes to have any interest in any Parcel, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of each and each Person owning any interest in or occupying any portion of a Parcel. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel, the Person so acquiring, coming to have such interest in, or occupying a Parcel, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

14. Enforcement. In the event of a breach of any of the terms, covenants, conditions or restrictions hereof, including the payment of Taxes and assessments, by any Owner of any portion of any Parcel, and if such breach continues for a period of thirty (30) days after the defaulting Owner's receipt of a notice of such breach, or such longer period as may be reasonably required to cure such breach provided the defaulting Owner has commenced the cure of such breach within such thirty (30) day period and is diligently prosecuting the cure of such breach, not to exceed one hundred twenty (120) days, any one or all of the Owners of the other Parcel or Managers shall be entitled forthwith and after written notice to such breaching party to perform any of the breaching party's obligations hereunder or to make any payment required hereunder, as the breaching party's attorney-in-fact, and by reason of so doing, the Owner or Manager taking such action shall not be liable or responsible for any loss or damage thereby sustained by the breaching party. All actual out of pocket, reasonable costs and expenses incurred by any Owner or Manager in performing any of the breaching Owner's obligations or in

making any such payment shall be assessed against the defaulting Owner and, upon filing a notice of such assessment in the Utah County Recorder's Office, shall constitute a lien against the real property or the interest therein for which such payment or performance was made, but any such lien shall be and is hereby made subordinate to the lien of any first Mortgage covering any portion of the Parcels. The Owner of a Parcel, or any portion of a Parcel, or Manager shall also have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the party prevailing in such action or arbitration 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 or the arbitrator and made a part of any judgment rendered. In addition to the foregoing, if a defaulting Owner shall fail to pay another Owner or Manager amounts due by such defaulting Owner within thirty (30) days after delivery of written demand on the defaulting Owner, then: (i) a five percent (5%) late payment fee shall be added to the amount due on the thirty-first (31st) day; and (ii) the unpaid balance shall thereafter accrue interest at the rate of ten percent (10%) per annum.

15. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

16. Deadlock.

(a) A deadlock shall be deemed to exist (a "**Deadlock**") if at any time a Budget is submitted for approval and the Approving Parties cannot agree on a Budget prior to January 1 of the year in which such Budget is to be effective, and any Approving Party withholding such approval reasonably believes that the items sought to be changed:

(i) are impossible to perform or if performed, would result in a violation of applicable Laws; or

(ii) would unreasonably increase the cost of the work to be performed by the Approving Party withholding such approval.

(b) The Deadlock shall be resolved by mutual written agreement of the Approving Parties, or if the Approving Parties cannot agree within ten (10) business days after the Deadlock first arises, any Approving Party may submit the Deadlock first to mediation and then to binding arbitration pursuant to the following procedure: any Approving Party may give written notice to the other Approving Parties of the election to submit the Deadlock to mediation (the "**Mediation Notice**"). The Approving Parties shall then seek to agree on the identification of an arbitrator. If such parties cannot agree on an arbitrator within ten (10) business days after the Deadlock first arises, any party may apply to the Chief Justice of the Third Judicial District Court in the state of Utah to

appoint an arbitrator. The Deadlock shall be presented to the mediator within 30 days after the appointment of the mediator. If the Deadlock is not resolved to the mutual satisfaction of the parties during the mediation, then immediately following the conclusion of the mediation, the parties shall proceed to submit the Deadlock to binding arbitration, using an arbitrator agreed upon by the parties, or if such parties cannot agree on an arbitrator within ten (10) business days after the conclusion of the mediation, any party may apply to the Chief Justice of the Third Judicial District Court in the state of Utah to appoint an arbitrator. The arbitration shall be conducted in accordance with the following rules and procedure: The entire procedure shall be conducted and concluded within ninety (90) days following the designation of the arbitrator. Each party shall be limited to no more than three (3) depositions of not more than five (5) hours duration each for matters less than \$500,000, but for matters more than \$500,000 the arbitration shall proceed in accordance with the American Arbitration Association's ("AAA") rules. The rules of evidence as applied in the Utah State District Courts shall generally govern, provided that the arbitrator shall have broad discretion to hear any evidence that the arbitrator deems to be trustworthy and relevant. For disputes less than \$500,000: (1) following the conclusion of the depositions, each party shall submit to the arbitrator a written hearing brief not to exceed 15 pages in length, and (2) thereafter the parties shall proceed with the arbitration hearing before the arbitrator, who shall render a final written decision on the Deadlock within ninety days following the initiation of the arbitration. In all disputes the determination of the arbitrator shall be final and binding and shall not be subject to appeal. The Approving Parties shall be responsible for the payment of its own attorneys' fees and one-half of the fee payable to the arbitrator incurred in resolving the Deadlock, notwithstanding the AAA rules; provided, however, the arbitrator shall have the authority to award to the prevailing party the right to recover from the other party the attorneys' fees and arbitration costs incurred by the prevailing party in resolving the Deadlock.

(c) If or to the extent the arbitrator agrees with the party withholding approval that the items sought to be changed meet any of the criteria enumerated in subsection 16(a) above, then the arbitrator shall rule in favor of the withholding party.

(d) If or to the extent the arbitrator does not agree with the party withholding approval that the items sought to be changed meet any of the criteria enumerated in subsection 16(a) above, then the arbitrator shall rule in favor of the requesting party.

17. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

18. Pronouns and Plurals. Whenever the contest may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

19. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules.

20. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

21. Exhibits. All exhibits annexed to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

22. Time of Essence. Time is of the essence of this Declaration.

23. No Public Dedication. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever. The provisions of this Section 23 shall not limit any dedication for a public use made on a plat or any other instrument of record.

(Signatures begin on following page)

EXECUTED the day and year first above written.

"Declarant"

COLD SPRING RETAIL, L.C., a Utah limited liability company, by its Manager

KC GARDNER COMPANY, L.C., a Utah limited liability company

By: [Signature]
Name: Christian Gardner
Its: Manager

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

On this 12th day of March, 2024, personally appeared before me Christian K. Gardner, manager of KC Gardner Company, L.C., a Utah limited liability company, the manager of Cold Spring Retail, L.C., a Utah limited liability company, who executed this instrument on behalf of said company.

[Signature]
NOTARY PUBLIC
Residing at: Utah County

My Commission Expires:
08-25-2024

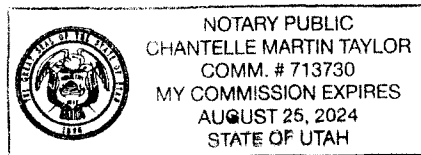


EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description

Lot 101 and Lot 102, COLD SPRING RETAIL PLAT A, according to the official plat thereof as recorded in the office of the Utah County Recorder on July 27, 2023, as Entry No. 48595:2023.

EXHIBIT "C"
TO
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Project Monument Sign



DESIGN LEGEND

S1: INTERNALLY LIT D'S MONUMENT SIGN W.
HALO LIT CHANNEL LETTERS
- 5'-4" x 11'-0" OVERALL

PRODUCTION