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RICHARD T. MAUGHAN  
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INSURANCE AGENCY, INC.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Dentons Durham Jones Pinegar P.C.  
3301 N. Thanksgiving Way, Ste. 400  
Lehi, Utah 84043  
Attn: Brian C. Cheney

APNs: 15-144-0001; 15-144-0002; 15-144-0003

170709-DMF

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
LAYTON STATION**

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**DECLARATION OF COVENANTS,  
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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAYTON STATION (this "**Declaration**") is made this 10 day of November, 2023, by WINKEL ROCK, LLC, a Utah limited liability company ("**Declarant**").

**Recitals**

A. Declarant is the owner of certain real property located in the County of Davis, State of Utah more particularly described in **Exhibit A** and shown on the map attached hereto as **Exhibit B** (the "**Map**"), each of which are incorporated herein by this reference (the "**Real Property**").

B. Declarant desires and intends that the Real Property and the improvements thereon be operated as a mixed use residential and commercial development to be called "Layton Station" (the "**Project**"), and to impose upon the Real Property and all parcels from time to time created within the Real Property, mutual and beneficial restrictions, covenants, agreements, easements, conditions and charges as hereinafter set forth, under a general plan for the benefit of all of the Real Property.

C. The Project shall initially consist of: (i) a five (5) story apartment building over a one (1) level parking structure (the "**Apartment Building**") located on a portion of the Real Property depicted on the Map attached hereto as "**Lot 1**"; (ii) a mixed-use commercial building (office and retail) (the "**West Commercial Building**") located on a portion of the Real Property depicted on the Map attached hereto as "**Lot 2**"; (iii) a mixed-use commercial building (office and retail) (the "**East Commercial Building**") located on a portion of the Real Property depicted on the Map attached hereto as "**Lot 3**"; (iv) certain Common Areas consisting of roads, parking areas, landscaping and open space, each as more particularly shown on the Map or otherwise described in this Declaration (collectively, the "**Initial Structures**"). It is anticipated that all or a portion of the Annexable Property will be annexed into the Project and that additional property and uses will be added to the Project and made subject to this Declaration in accordance with ARTICLE XIV hereof. Lot 1, Lot 2, Lot 3 and any other legally subdivided lots or parcels annexed into the Project shall sometimes be referred to individually as a "**Parcel**" and collectively as the "**Parcels**."

D. Declarant and its Affiliates may, in Declarant's or such Affiliates' sole and absolute discretion, convey title or lease portions of the Real Property to certain persons or entities; provided, however, that it is the express intention of the Declarant that all of the Real Property, whether conveyed absolutely or subject to a leasehold estate, shall at all times be subject to the covenants, conditions and restrictions hereinafter set forth and all other terms and provisions of this Declaration, as amended or otherwise modified from time to time.

E. Declarant deems it desirable to establish covenants, conditions and restrictions upon the Real Property and each and every portion thereof for purposes of creating a general scheme for the improvement, development, use, occupancy, maintenance and enjoyment thereof, all to insure the proper development and use of the Real Property and the Project and to enhance and protect its value, desirability and attractiveness as a viable a mixed-use residential, retail and office development; and more particularly, without limitation, to: (i) protect the Owners and Occupants of Parcels against such improper or inappropriate development and use of surrounding Parcels as may depreciate the value and use of their

Parcels; (ii) prevent the erection on the Real Property of structures constructed of improper or unsuitable materials, or with improper quality and methods of construction; (iii) insure reasonably consistent development of the Real Property; (iv) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Real Property in order to achieve harmonious appearance and function; (v) provide access to Parcels, adequate parking and appropriate loading or other facilities; (vi) insure adequate funding for construction, maintenance, care and repair of Common Areas; (vii) provide for the ownership and maintenance for the common benefit of all Owners and Occupants of open space, trails, landscaped entries, drainage ways, streets and other Common Areas; and (viii) generally promote the welfare and safety of the Occupants and Owners of Parcels.

F. Each Owner of a Parcel within the Project shall have appurtenant to it a membership in the Association (as defined below), which will be the management body for the Project.

## **ARTICLE I** **DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article I shall for all purposes of this Declaration, have the meaning herein specified.

### **Section 1.1    Accessibility Law**

Accessibility Law means any federal, state or local law, statute, code, ordinance, rule, regulation or requirement relating to accessibility to facilities or properties for disabled, handicapped and/or physically challenged persons, including, without limitation, the Americans with Disabilities Act, as amended (42 U.S.C. Sections 12101, et seq.).

### **Section 1.2    Affiliate**

Affiliate of any specified Person means any other Person directly or indirectly controlling or controlled by or under common control with such specified Person.

### **Section 1.3    Annexable Property**

Annexable Property shall mean that certain real property adjacent to the Real Property, legally described and depicted on **Exhibit C** that may be annexed into and made part of the Project and subject to this Declaration in accordance with ARTICLE XIV hereof.

### **Section 1.4    Apartment Parcel Owner**

Apartment Parcel Owner shall mean the Owner of the Apartment Building and Lot 1.

### **Section 1.5    Articles**

Articles shall mean the Articles of Incorporation of the Association which have been, or will be, filed in the office of the Secretary of State of the State of Utah, as the same may from time to time be amended.

**Section 1.6 Association**

Association shall mean Layton Station Owners Association, Inc., a Utah nonprofit corporation, which is the owners association to be established by Declarant pursuant to Section 11.2 hereof, for the purpose of administering this Declaration.

**Section 1.7 Board of Directors or Board**

Board of Directors or Board shall mean the board of directors of the Association.

**Section 1.8 Bylaws**

Bylaws shall mean the Bylaws of the Association which may be adopted by the Board of Directors, as such Bylaws may be amended from time to time.

**Section 1.9 City**

City shall mean the city of Layton located in Davis County, Utah.

**Section 1.10 Commercial Parcels**

The Commercial Parcels shall mean, collectively, Lots 2 and 3.

**Section 1.11 Common Area**

The Common Area or Common Areas shall mean (a) the areas designated within the Real Property for open space, trails, recreation or landscaping, as may be shown on the Map or otherwise described herein, including, without limitation, the Kays Creek greenspace and associated public trails (b) the Easement Areas (as defined in ARTICLE VII below) or all other easements or rights-of-way for access, utilities, snow removal, drainage or other uses as shown on the Map, (c) any additional access or use areas which may be established by Declarant within the Real Property through the conveyance of real property or the grant of easements by the Owner of a Parcel to the Association, or which are to be maintained by the Association, (d) entry monument signs or other signage for the Project generally, (e) perimeter block walls or fences around the Project, if any, which currently exist or which may hereafter be constructed, (f) common curb cuts, roadways, driveways, drive aisles, walkways, and sidewalks within the Real Property, (g) certain parking areas within the Project, and (h) any similar amenities which may now or hereafter be established by Declarant for the common use and enjoyment of all Parcels.

**Section 1.12 Common Area Assessments**

Common Area Assessments shall mean the assessments for Common Expenses, as more particularly described in Section 9.2, including assessments for Limited Common Area maintenance expenses; provided, however, that any maintenance expenses allocable to Limited Common Areas shall be allocated as described in Section 9.2.

**Section 1.13 Common Expenses**

Common Expenses shall mean all costs and expenses reasonably incurred hereafter in connection with the Common Areas, including, without limitation, the operating expenses (which shall include the proportionate cost of any management agreement entered into with a property manager pursuant to Section 11.8 hereof) and Real Estate Taxes; cleaning and maintenance of the Common Areas or any portion thereof;

maintenance of Common Area landscaping and the replacement of same as necessary; cleaning, striping, sealing and paving of the paved surfaces of the Common Area; the maintenance, repair, replacement of all facilities necessary for the delivery of other utilities or lighting which may exist for the benefit of the Common Areas or all Parcels within the Project; the maintenance of any fixtures, pipes or other appurtenances necessary for the delivery of any utility service to the Common Areas and the Parcels to the extent such maintenance is not the responsibility of a public utility, governmental entity or Parcel Owner; and maintenance of reasonable replacement reserves. Common Expenses shall also include the following:

(a) improvements, maintenance, irrigation, utilities, management, operation, reserves, repair and replacement of landscaping, recreation, open space, streets, drainage facilities, joint use and related improvements to all Common Areas;

(b) unpaid assessments until such time as said unpaid assessments are collected, whereupon amounts so collected shall be appropriately credited to the accounts of those Owners who paid assessments which were higher than they otherwise would have been because of such unpaid assessments;

(c) reasonable, normal and customary costs of management and performance of Association duties and obligations hereunder, including, but not limited to, compensation paid to managers, accountants, consultants, attorneys, contractors, employees, and members of the DRC (as defined below);

(d) the reasonable costs of any insurance obtained by the Association including, without limitation, public liability insurance, fidelity coverage, casualty, errors and omissions, and other forms of insurance generally obtained by persons or firms performing functions similar to those performed by the Association;

(e) reasonable reserves as deemed appropriate by the Association;

(f) any costs or expenses incurred with respect to the operation, maintenance, repair or replacement of any monument sign or signs not owned by Owners, Occupants or others erected at entrances to the Project;

(g) other reasonable expenses incurred by the Association in connection with the maintenance, management, operation, improvement or repair of the Common Areas, or in the furtherance of the purposes of this Declaration or in the discharge of any duties or powers of Association herein described;

(h) Costs and expenses to improve and maintain the Detention Basin under the Detention Basin Easement Agreement;

(i) Costs and expenses to improve and maintain the Sidewalk Landscape Area;

(j) Any other costs and expenses, if any, allocated to the Association under other agreements with adjacent property owners for matters benefitting the Property;

(k) Any costs incurred for the maintenance, repair or operation of the Detention Basin under the Detention Basin Easement or otherwise; and

(l) the cost of any other services which the Association determines is desirable for the benefit of the Real Property and the Owners and Occupants, including, without limitation, maintenance of streets, utilities, drainage facilities, snow removal, and landscaping service.

**Section 1.14 County**

County shall mean Davis County, Utah.

**Section 1.15 Declarant**

Declarant shall have the meaning provided in the opening paragraph hereof, and, to the extent provided in Section 11.1 below, its successors and assigns.

**Section 1.16 Default Interest Rate**

Default Interest Rate shall mean the lesser of: (i) eighteen percent (18%) per annum; or (ii) the applicable highest lawful rate per annum.

**Section 1.17 Detention Basin**

Detention Basin shall mean that certain detention basin and related drainage systems, facilities, landscaping, fencing and equipment located on a parcel of land adjacent to the Real Property as more particularly depicted on **Exhibit D** attached hereto and owned by a third party (the "**Detention Basin Owner**"). Declarant anticipates that the Detention Basin will be maintained and repaired by the Association pursuant to the Detention Basin Easement, and the costs of which shall be included as a Common Expense.

**Section 1.18 Detention Basin Easement**

Detention Basin Easement is defined in Section 7.5 below.

**Section 1.19 DRC**

DRC shall mean the Design Review Committee established pursuant to ARTICLE VI hereof.

**Section 1.20 East Commercial Building Parcel Owner**

East Commercial Building Parcel Owner shall mean the owner of Lot 3 and the East Commercial Building.

**Section 1.21 Environmental Laws**

Environmental Laws shall mean any Law that concerns the management, control, storage, discharge, treatment, containment, removal and/or transport of substances or materials that are or may become a threat to public health or the environment, including, without limitation, (i) the Clean Air Act (42 U.S.C. Sections 7401, et seq.); (ii) the Clean Water Act (33 U.S.C. Sections 1251 et seq.); (iii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA, 42 U.S.C. Sections 9601 et seq.); (iv) the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001, et seq.); (v) the Endangered Species Act of 1973 (16 U.S.C. Sections 1531, et seq.); (vi) the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, et seq.); (vii) the Occupational Safety and Health Act of 1970 (OSHA, 29 U.S.C. Sections 651, et seq.); (viii) the Resource Conservation Recovery Act, as amended by

the Hazardous and Solid Waste Amendments of 1984 (RCRA, 42 U.S.C. Sections 6901 et seq.); (ix) the Safe Drinking Water Act (42 U.S.C. Sections 300f, et seq.); (x) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.); (xi) any regulations promulgated pursuant to items (i)-(x) above; and (xii) any similar local, state or federal laws, rules, ordinances or regulations either in existence as of the date hereof, or enacted or promulgated after the date of this Declaration.

**Section 1.22 Hazardous Substance**

Hazardous Substance shall mean any substance, material, element, compound, mixture, solution, waste, pollutant or matter that may give rise to liability under any Environmental Law or under any common law theory involving materials or substances which are (or alleged to be) hazardous to human health or the environment, based on nuisance, trespass, negligence, strict liability or other tortious conduct.

**Section 1.23 Laws**

Laws shall mean all statutes, ordinances, rules, regulations, orders and decrees of all municipal, state and federal authorities either in existence as of the date hereof or enacted or promulgated after the date of this Declaration.

**Section 1.24 Lien**

Lien shall mean a lien against any Parcel arising pursuant to this Declaration.

**Section 1.25 Limited Common Area**

Limited Common Area means a portion of the Common Areas specifically designated as a Limited Common Area in this Declaration or the Map (or any supplement to any of the foregoing) and allocated for the primary or exclusive use of one or more but fewer than all of the Parcels.

**Section 1.26 Map**

Map shall mean that certain subdivision plat for the Project attached hereto as **Exhibit B**.

**Section 1.27 Member**

Member shall mean any Person who is designated as a member of the Association pursuant to Section 11.2 hereof.

**Section 1.28 Mortgage/Mortgagee**

Mortgage/Mortgagee shall mean a mortgage, deed of trust or other security device affecting all or any portion of a Parcel and which shall have been recorded in the Public Records, and "Mortgagee" shall mean and refer to the mortgagee, beneficiary or other holder of any of the foregoing instruments, provided the name and address of such mortgagee, beneficiary or other holder shall appear among the Public Records.

**Section 1.29 Occupant**

Occupant shall mean the lessee, user or Owner of a Parcel and anyone residing in, occupying or otherwise using such Parcel under or through such lessee or Owner, including, without limitation, each of their respective employees, agents, contractors and invitees.

**Section 1.30 Owner**

Owner shall mean any Person owning a fee simple estate in any Parcel, excluding any Person who holds such interest as security for the payment of an obligation, but including any Mortgagee or other security holder in actual possession of any Parcel, by foreclosure or otherwise, and Person taking title from any such security holder.

**Section 1.31 Parcel**

Parcel, or Parcels, shall have the meaning provided in Recital C above and refer to any legally created parcel of land located within the Project as shown on the Map, including without limitation, any Parcels owned by Declarant. No Parcel may be created other than by Declarant so long as Declarant owns any portion of the Project, unless prior written approval is obtained from Declarant, such approval to be granted or withheld in the exercise of the Declarant's sole discretion.

**Section 1.32 Party Wall**

Party Wall shall mean each wall or fence which may be built along the property lines between Parcels within the Project, but shall exclude any perimeter block walls or fences constructed around the exterior of the Project.

**Section 1.33 Person**

Person shall mean any artificial persons or legal entities (including without limitation associations, corporations, partnerships, limited liability companies, governmental subdivisions, joint ventures, trusts, unincorporated associations or any other form of entity) as well as natural persons, and the term includes the plural.

**Section 1.34 Plat**

Plat shall mean the subdivision plat for Layton Station Phase 1 Subdivision recorded in the official records of the Davis County, Utah Recorder's office.

**Section 1.35 Project**

Project shall have the meaning provided in Recital C above.

**Section 1.36 Public Records**

Public Records shall mean the Official Records of Davis, Utah, or such other public office as may, at the time and according to the context, be the repository of records and documents imparting constructive notice under applicable local, state or federal law.

**Section 1.37 Real Estate Taxes**

Real Estate Taxes shall mean all real and personal property taxes and other taxes, assessments, levies, and charges, whether special, extraordinary, or otherwise, whether foreseen or unforeseen, which may be levied, assessed or imposed upon, on account or with respect to: (i) the ownership of and/or all other taxable interests in all land included within the Common Areas; and (ii) all Structures, and other improvements included within the Common Areas.



**Section 1.38 Roadway Easement**

Roadway Easement shall mean, collectively, the easements for roads, driveways, curb cuts, and for ingress and egress throughout the Project established by Declarant upon the Real Property, including, but not limited to, those driveways, access ways, roadways, drive aisles and curb cuts shown on the Map, which easements may be amended from time to time, and as more fully set forth in Section 7.6 of this Declaration.

**Section 1.39 Sidewalk Landscape Area**

Sidewalk Landscape Area shall have the meaning set forth in Section 7.12 below.

**Section 1.40 Structure**

Structure shall mean any building, edifice or improvement, the placement of which upon the Real Property might affect the physical appearance thereof, including, by way of illustration and not limitation: buildings, sheds, covered patios, walkways, driveways, fountains, parking areas, trees, shrubbery, paving, curbing, landscaping, fences or walls, satellite dishes, television or radio antennas, and any sign or signboard.

**Section 1.41 Turnover Date**

Turnover Date shall mean the date upon which Declarant and/or its Affiliates no longer own a Parcel, at which time Declarant shall assign, to the Association, all of Declarant's rights, powers, duties and reservations under this Declaration pursuant to Section 11.2 hereof.

**Section 1.42 West Commercial Building Parcel Owner**

West Commercial Building Parcel Owner shall mean the Owner of the West Commercial Building and Lot 2.

**ARTICLE II  
GENERAL DECLARATION**

Declarant hereby declares that all of the Project, including the Real Property, is hereby made subject to this Declaration and shall be conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration. All of the covenants and provisions of this Declaration are hereby declared to be in furtherance of a general plan for the subdivision, improvement, use, enjoyment and sale of the Parcels, structures and improvements within the Project, and are established for the purpose of enhancing and preserving the value, aesthetics, desirability and attractiveness of the Project and the Parcels. All of the covenants, conditions, restrictions and easements provided in this Declaration shall run with the land now or hereafter constituting the Project, for all purposes, and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners, as well as their respective successors-in-interest and assigns. All of the covenants, conditions, restrictions and easements provided in this Declaration shall also be binding upon all Occupants of the Project, as well as their respective successors-in-interest and assigns, invitees, employees and agents.

**ARTICLE III**  
**DURATION AND MODIFICATION OF RESTRICTIONS**

**Section 3.1     Duration**

This Declaration shall remain in full force and effect for sixty (60) years, and may not be terminated prior to such date, unless terminated by an instrument recorded in the Public Records and executed by (a) majority of Parcel Owners, (b) Declarant (so long as it or any of its Affiliates own any portion of the Real Property), and (c) if applicable, any Required Mortgagees (as defined in Section 3.3). Thereafter, this Declaration shall be renewed automatically, without further notice and without limitation, for successive renewal periods of ten (10) years each, unless terminated by instrument recorded in the Public Records and executed by Owners owning at least two-thirds (2/3) of the Parcels and, if applicable, any Required Mortgagees; provided, however, that any termination of this Declaration shall not operate to terminate the easements granted under ARTICLE VII hereof to the extent that such easements are necessary for the continued use of any Parcel, unless a separate easement is granted and recorded in connection with the instrument terminating this Declaration.

**Section 3.2     Amendment**

Prior to the Turnover Date, this Declaration may be modified only by the recordation, in the Public Records, of an agreement or document of modification executed by (a) a majority of Parcel Owners, (b) Declarant and, if applicable (c) any Required Mortgagee. Following the Turnover Date, this Declaration may be modified only by the recordation, in the Public Records, of an agreement or document of modification executed by Owners owning not less than two-thirds (2/3) of the Parcels and, if applicable, any Required Mortgagee. Notwithstanding the foregoing, no amendment to ARTICLE XIV of this Declaration or any other provision hereof affecting the Annexable Property shall be effective without first obtaining the written consent of the owner(s) of the Annexable Property, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 3.3     Required Mortgagee Consent**

A first Mortgage may, by its terms, require that a termination or amendment of this Declaration (or certain specified amendments) be approved in writing by the holder of the Mortgage (the Mortgagee under such a first Mortgage is referred to as a "Required Mortgagee"). In such event, a termination or amendment (or, if applicable, the specified amendment) shall not be effective as against a Required Mortgagee without its prior written approval or consent.

**ARTICLE IV**  
**USE OF PROPERTY**

**Section 4.1     Permitted Uses**

Contemplated permitted uses may include, but are not limited to, the following:

- (a) multi-family residential units, with respect to Lot 1;
- (b) retail, restaurant, offices or other commercial uses, with respect to the Commercial Parcels;
- (c) certain limited retail uses, subject to the written consent and approval of:
  - (i) the Declarant, if prior to the Turnover Date; or
  - (ii) the Association if, after the Turnover Date; and

(d) other commercial or residential uses permitted by this Declaration and applicable zoning and land use regulations.

The DRC may restrict, control or prohibit any use or uses of any Parcel (in its sole discretion) subject to this Declaration.

**Section 4.2 Prohibited Uses and Development Covenants**

The following operations and uses are expressly prohibited on the Real Property:

(a) any other residential use not expressly provided for herein, including, without limitation, mobile homes or trailer courts, except 24-hour watchmen/security associated with permitted uses on the Real Property as approved by Declarant and/or the DRC, as applicable;

(b) any school;

(c) any industrial, commercial, or office use which is not authorized pursuant to the applicable zoning or land-use ordinances (or other entitlement or special use permits/requirements) of the City, Davis County or other applicable governmental body;

(d) Heavy or light industrial or manufacturing uses, or distribution, warehousing or storage including, without limitation, labor camps; drilling for and/or the removal of water, oil, gas or other hydrocarbon or mineral substances, unless otherwise specifically allowed by the Declarant in its sole discretion; mining, unless otherwise specifically allowed by the Declarant in its sole discretion; refining of petroleum or any of its byproducts; commercial excavation of building or construction materials, unless otherwise specifically allowed by the Declarant in its sole discretion; auto repair or maintenance facilities;

(e) Stadiums and/or sporting complex;

(f) Dumping, disposal, incineration or reduction of garbage, sewage, manufacturing wastes of any type, offal, dead animals or refuse, unless otherwise specifically allowed by the Declarant in its sole discretion;

(g) Mortuary, cemetery or undertaking;

(h) Agriculture, unless otherwise specifically allowed by the Declarant in its sole discretion; and

(i) Any use which, in Declarant's or the Association's sole discretion, would constitute a nuisance or otherwise unreasonably interfere with the use and enjoyment of other Parcels within the Project.

**Section 4.3 No Hazardous Waste**

No Parcel or any portion thereof shall ever be utilized for the storage or disposal of Hazardous Substance, nor shall any Owner cause, suffer or permit any Hazardous Substance to be brought upon, kept, or used in or about the Project, except to the extent the bringing upon, storage or use of such Hazardous Substance (i) is necessary or useful to the conduct of any business lawfully permitted to be operated (under applicable Laws and this Declaration) within the Project; (ii) will be in compliance with all Laws, including without limitation, all Environmental Laws; (iii) will not result in the breach or default under a Mortgage;

and (iv) is not harmful to any other Occupant or invitee, of the Project. If an Owner breaches the obligations stated in the preceding sentence, or if notwithstanding that such presence is permitted under the preceding sentence, the presence of Hazardous Substance within the Project caused, suffered or permitted by an Owner results in contamination of the Project or any part thereof, or if contamination of the Project or any part thereof by Hazardous Substances otherwise occurs for which an Owner is legally liable to any other Occupant of the Project for damage resulting therefrom, then such Owner shall protect, indemnify, defend and hold the other Owners and their tenants harmless from any and all claims (including, without limitation, diminution in value of the Project, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Project, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise as a result of such contamination. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Substances present in the soil or ground water on or under the Real Property. Without limiting the foregoing, if the presence of any Hazardous Substance within the Project or any part thereof caused, suffered or permitted by an Owner results in any contamination of the Project or any part thereof, such Owner shall promptly take all actions at its sole expense as are necessary to return the Project or such part thereof to the condition existing prior to the introduction of any such Hazardous Substance to the Project; provided that the approval of such actions shall first be obtained from the affected Owners and all Mortgagees, which approval may be given or withheld by such Owners and Mortgagees in their sole discretion.

**Section 4.4     No Adult Uses**

No portion of the Project shall be utilized as a marijuana dispensary or store, an adult theater, adult bookstore or adult video store; nor shall any portion of the Project be utilized for the sale or rental of any pornographic or "adult" materials.

**Section 4.5     Nuisances and Noxious or Offensive Activities**

No Owner or Occupant of any portion of the Project shall create a nuisance to all or any part of the Project or the surrounding neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Parcel (except trash awaiting regular removal and temporarily placed in approved trash receptacles) and no odors shall be permitted to arise therefrom so as to render any Parcel or portion thereof unsanitary, unsightly, offensive or detrimental to any property in the vicinity thereof or to the Occupants thereof.

**Section 4.6     Underground Utilities, Pipes, etc.**

All pipes, conduits, cables, lines and other equipment for water, gas, sewage, drainage, steam, electricity, or any other energy or service, shall be installed and maintained underground in accordance with plans and specifications approved by the DRC, subject to applicable county or municipal codes. Each Parcel and Structure shall connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Declarant.

**Section 4.7     Signs**

Subject to applicable Laws, the location, size, design and construction of all signs shall be established and maintained in accordance with the plans and specifications approved by the DRC, in its sole and absolute discretion. The DRC, in its sole and absolute discretion, may adopt and promulgate reasonable rules and regulations relating to the usage or standardization of signs throughout the Project. Any signs that advertise products or services which are not located on the premises of the Owner

("Billboards") are prohibited, except with the express written approval of the DRC. Billboards include, without limitation, signs attached to walls and those otherwise attached to Structures, as well as those not attached to Structures and supported by uprights or braces on the ground.

**Section 4.8 Fumes, Gases, Odors, etc.**

No fumes, odors, gases, vapors, acids or other substances shall be permitted to escape or be discharged into the atmosphere which, in the sole and absolute determination of the Association or Declarant, may be detrimental to the health, safety or welfare of persons, or may interfere with the comfort of persons within the area, or which may be harmful to property or vegetation. Without limiting the generality of any other provision hereof, all uses within the Project shall comply with all applicable county or municipal air pollution control standards.

**Section 4.9 Maintenance of Parcels**

Subject to Section 9.1 below, the Owner and/or Occupant of every Parcel shall, at each Owner's and/or Occupant's sole cost and expense, maintain those portions of its Parcel not constituting Common Area or Limited Common Area (including without limitation all Structures thereon) in a safe, clean, neat and sanitary condition and in all respects in compliance with all Laws, including governmental zoning, health, fire and police requirements. Such maintenance shall, if applicable, include, without limiting the generality of the foregoing:

(a) Maintaining the paved, concrete or other improved surfaces of the Parcel not comprising Common Area or Limited Common Area in a level, smooth and evenly covered condition with the type of surfacing material originally installed, or such substitute as shall in all respects be equal in quality, use and durability;

(b) Removing all trash, refuse, papers, debris and dirt, and thoroughly sweeping the area to the extent necessary to keep the Parcel in a clean and orderly condition;

(c) Placing, maintaining, keeping in repair and replacing as necessary any business signs, directional signs, markers, lines and striping;

(d) Maintaining any satellite dishes, television antennas, and/or radio antennas on the Parcel, if any are approved, in such a manner so that they are not visible and otherwise do not cause the Parcel to be maintained in anything but a clean and orderly condition;

(e) Operating, keeping in repair and replacing as necessary such artificial lighting facilities as shall be reasonably required for the safe and attractive condition of the Parcel;

(f) Maintaining all landscaping, including making such replacements of shrubs and other landscaping as is necessary, keeping the landscape areas at all times adequately weeded, fertilized and watered;

(g) Maintaining all exterior walls, roofs, covered walkways and overhangs in a good condition and state of repair;

(h) Maintaining any perimeter walls in a good condition and state of repair;

(i) Providing all snow and ice removal services for all areas on a Parcel not comprising Common Areas; and

(j) Maintaining each Parcel and all improvements thereon in compliance with applicable Accessibility Laws.

If in the reasonable opinion of the DRC any Owner or Occupant fails to use, maintain and preserve all Parcels owned (or leased or subleased, as the case may be) by such Owner or Occupant in accordance with this ARTICLE IV, the Association may give written notice to the violating Owner or Occupant. If within fifteen (15) days after the notice of violation of this ARTICLE IV, the Owner of the Parcel upon which such violation occurs shall not have taken reasonable steps to act in accordance with this ARTICLE IV, the DRC or the Association shall have the right, through its agents and employees, to enter upon such Parcel, and to take such steps as may be necessary to remedy such violation. The DRC or the Association, as well as their agents, shall not thereby be deemed to have trespassed upon such Parcel and shall be subject to no liability to the Owner or Occupant of such Parcel for such entry and any action taken in connection with the removal of any violation. The cost of any abatement or removal hereunder shall be a binding, personal obligation of such Owner, and may also be enforced by a Lien in the manner provided in Section 10.2 below.

**Section 4.10 Construction; Clean-Up**

During construction of any Structure on any Parcel, the Owner thereof shall keep the construction site free of accumulations of rubbish and scrap materials. Once commenced, all construction and/or site work shall be diligently pursued to completion. With the prior written consent of the Association or Declarant, which consent shall not be unreasonably withheld, a trailer or other temporary Structure shall be allowed on a Parcel and occupied during the period of construction on said Parcel. Construction materials, trailers and similar items employed in connection with such construction shall be kept within the property lines of the Parcel and in a neat and orderly manner and shall be removed promptly upon completion of construction. The determination of the promptness of any such removal shall be within the sole and absolute discretion of the Association.

**Section 4.11 Dirt, Dust and Waste Discharge**

No use will be permitted which emits dust, sweepings, dirt or cinders into the atmosphere, or discharges liquid, solid wastes or other harmful matter into any runoff, irrigation or other water. No waste or any substance or materials of any kind shall be discharged into any public sewer serving the Project, or any part thereof, in violation of any Laws, including without limitation, all Environmental Laws.

**Section 4.12 Drainage**

There shall be no interference with the established drainage pattern or improvements of the Project, without the prior written consent of the DRC.

**Section 4.13 Laws**

All Occupants shall comply with all applicable laws, rules, ordinances, codes and regulations governing the Project, either in existence as of the date hereof, or enacted or promulgated after the date of this Declaration, including the covenants, conditions and restrictions contained in this Declaration.

**Section 4.14 Enclosed Operations**

Except for loading, unloading and parking, all operations and business activities on a Parcel shall be carried on within fully enclosed buildings, and no outside operations shall be permitted, except in accordance with the guidelines adopted by the DRC, without the prior written approval of Declarant. No

junk, trash, debris, or similar matters shall be placed, stored, or kept outside of any building in the Project. Equipment, materials, machinery and other such items (collectively referred to as "**Business Equipment and Machinery**") used in the operation of the business located on the Parcel may be stored on the Parcel, provided the Business Equipment and Machinery shall be enclosed in a visually screened yard so that the Business Equipment and Machinery is not visible from any public street or from any other Parcel. Except as provided in this Section 4.14, no equipment, machinery, materials, junk, debris or similar matters shall be placed, stored, or kept outside of any building in the Project.

**Section 4.15 Leafletting**

No distribution, leafletting, broadcasting, posting or other dissemination of any handbills, streamers, circulars, flyers or other promotional or advertising materials whatsoever shall be permitted at any time in the Project.

**Section 4.16 Parking**

No parking shall be permitted on any street, lawn, median strip, public walkway, swell, berm or other unpaved area or at any place other than on the paved parking spaces provided for and described in Section 5.1 below.

**Section 4.17 No Further Subdivision**

No Parcel may be divided into two or more parcels, nor may the property lines of any Parcel be altered, whether by lot line adjustment, subdivision map, parcel map or otherwise, without the prior written approval of the DRC; provided, however, that at any time prior to conveyance or transfer of any Parcel by Declarant to a third party, Declarant may adjust lot lines or resubdivide or replat the Project in a manner consistent with the overall plans and configuration of the Project in its sole and absolute discretion.

**Section 4.18 Party Walls**

To the extent not inconsistent with the provisions of this Section 4.18, the general rules of law regarding Party Walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

(a) Sharing of Repair and Expense. The costs of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use;

(b) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any Owners to call for a large contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions;

(c) Weatherproofing. Notwithstanding any other provisions of this Section 4.18, an Owner who by his negligent or willful act, causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements; and

(d) Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Section 4.18 shall be appurtenant to the Parcel and shall pass to such Owner's successors in title.

**Section 4.19 Improvement Districts**

Except as otherwise restricted below, each Owner agrees to participate, based upon such Owner's Proportionate Share (as defined in Section 9.2), in all improvement districts, if any, as designated by Declarant, to be in the best interest of the Project. In lieu of the Declarant's obligation to construct streets, drainage facilities, landscaping or any other improvements, Declarant may designate one or more improvement districts for the purpose of constructing any or all such improvements, and each Owner agrees to participate, as described herein, in all such improvement districts.

**Section 4.20 Declaration**

Each Owner acknowledges that Declarant and/or its Affiliates is engaged in master planning the Project. Each Owner will benefit materially from an orderly pattern of development on the Project. To achieve orderly development, it is necessary to subject all of the land in the Project to this Declaration. Each Owner acknowledges and agrees that title to the Real Property is subject to and benefitted by the Declaration.

**Section 4.21 Air Quality**

Each Owner and Occupant shall be responsible for obtaining, prior to any construction, all appropriate air quality control permits, and comply with all applicable air pollution control regulations and standards as administered by the Utah Department of Environmental Quality ("DEQ"). Any builder, contractor, or subcontractor shall likewise be individually responsible for obtaining appropriate permits from the DEQ prior to the initiation of activities, and for compliance with all applicable air pollution control regulations and standards as determined and interpreted by the DEQ.

**Section 4.22 Fuel Facilities**

Fuel storage and dispensing facilities may not be installed on a Parcel without prior written authorization of the DRC. The Owner of the Parcel on which such facilities are installed shall be fully responsible for ensuring that such facilities and their installation comply fully with all applicable laws and regulations, and the provisions of this Article.

**Section 4.23 Fences**

The use of fences on the Real Property is permitted only if such fencing complies fully with applicable provisions of the Design Guidelines (as defined in Section 6.8), if any, and the DRC has approved such fencing in writing.

**Section 4.24 Construction Standards**

Any builder, contractor, or subcontractor engaged to construct improvements on any portion of any Parcel may conduct its construction operations and activities and do all things necessary as required to expeditiously commence, continue and diligently complete construction of any such improvements, including the provision of temporary buildings or trailers for administration of work and for the storage of materials and equipment, and the construction of temporary security fences and lighting; notwithstanding the foregoing to the contrary, no temporary buildings, fences or trailers shall be allowed beyond twenty four (24) months without the prior written consent of the DRC. Each Owner is responsible for all costs of cleaning up any debris or waste arising from the construction of improvements on such Owner's Parcel improperly disposed of anywhere on the Real Property by any builder, contractor or subcontractor engaged by or on behalf of such Owner to construct improvements on such Owner's Parcel, and shall include



appropriate contractual provisions with respect to the same in all contracts for the construction of improvements on such Owner's Parcel entered into by such Owner. Each Owner and its agents must maintain an attractive, clean, nuisance-free environment during the period of construction. Declarant shall have the right to designate points of ingress and egress on the Parcel and within the Real Property for construction vehicles, and each Owner of a Parcel on which improvements are being constructed shall keep all streets cleared of mud and dirt left by construction vehicles entering such Parcel. Once commenced, all construction on a Parcel shall be continued with due diligence and good faith until completion.

**Section 4.24.1** Each Owner expressly covenants that it shall use its good faith efforts to minimize adverse impacts, including, without limitation, air, soil and water pollution, soil erosion, elimination of vegetation without replacement or increased runoff rates to areas outside its Parcel during construction, reconstruction, alteration, maintenance, repair, replacement or removal of improvements and that it shall indemnify and hold harmless the Association, the DRC, Declarant and other Owners from any and all damages resulting therefrom. All possible contaminants must be stored in a containment facility that will not allow such to enter any soils on or off the Parcel.

**Section 4.24.2** No excavation shall be made except in connection with the construction of an improvement, and upon completion thereof exposed openings shall be backfilled and disturbed ground shall be graded and leveled. At no time shall an Owner, Occupant or any other person drill or permit to be drilled on any Parcel any hole or sink any pipe for the purpose of obtaining or removing water, oil, gas, or any minerals or substances from below the surface of the land.

**Section 4.24.3** Prior to any excavation on a Parcel, the Owner shall determine and mark the location of and will protect all existing utilities and landscape irrigation lines. Utility lines and landscape irrigation lines are to be located before earth moving or drilling equipment operations are allowed to commence near underground utilities or landscape irrigation lines.

**Section 4.24.4** No mechanical equipment, apparatus or antennae visible to the unaided eye from outside the boundary of a Parcel shall be placed above the roof line (which shall be measured by the roof curb or parapet) of any building, except within an enclosure or behind opaque screening which has been approved in writing by the DRC, unless an exemption has been specifically approved in writing by the DRC.

**Section 4.24.5** Hookups for water, sewer, gas, electricity and telecommunications, whether to main lines running under the public right of way or otherwise, shall be the sole responsibility of the Owner or Occupant of each Parcel, and Declarant shall have no responsibility or liability in connection therewith.

**Section 4.25 Insurance**

Nothing shall be done or kept on any portion of the Project which will increase the rate, or permit the cancellation, of insurance of any other Owner's Parcel or property.

**Section 4.26 Oil Drillers**

Except by separate written approval from the Declarant, there will not be oil drilling, oil development, oil refining operation of any kind permitted on or in any portion of the Project, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted in, on or under any portion of the Project.

**Section 4.27 Mining**

Except by separate written approval from the Declarant, no derrick or other structure designed for use in boring, open pit mining, oil or natural gas, or precious minerals shall be erected, maintained, or permitted upon any portion of the Project.

**Section 4.28 Well Drilling**

Except by separate written approval from the Declarant, no derrick or other structure designed for use in boring, mining or quarrying for water, shall be erected, maintained, or permitted upon any portion of the Project.

**Section 4.29 Trash Containers**

Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept, stored, or stockpiled in a clean and sanitary condition and shall be enclosed so as not to be visible from any public street or from any other Parcel. Each Occupant shall arrange for the regular removal of all such waste at such Occupant's sole cost and expense.

**ARTICLE V  
PARKING**

**Section 5.1 Parking Areas**

The Project shall initially include three (3) types of parking areas: (1) Lot 1 shall have one (1) story parking garage exclusively serving the Apartment Building and its Occupants; (2) certain surface parking at the Project designated as Common Area, as more particularly shown on **Exhibit E**, for the general use of all of the Owners and the Occupants; and (3) certain surface parking areas designated for the exclusive use of the Owner and Occupants of the Apartment Building, as more particularly shown on **Exhibit E**. Each of the parking areas not designated as Common Area for the general use of all Owners and Occupants shall be considered Limited Common Areas for purposes of allocating the maintenance costs incurred by the Association in connection with such areas in accordance with Section 9.2 below. Notwithstanding the fact that the entire Project may be treated by local governmental authorities as a "center," "business park" or "residential complex," for purposes of computing the required parking on each Parcel, each Parcel shall be self-sufficient with respect to its available parking; that is, each Parcel shall provide at least as many parking spaces as would be required of that Parcel by law (taking into account the improvements and uses thereon) if it stood alone and not as part of a "center," "business park" or "residential complex;" provided, however, that Declarant shall have the right to grant additional easements in the Project for access and/or parking in order to accommodate and facilitate shared parking among the Parcels.

**Section 5.2 Parking Rights and Restrictions**

(a) Except for parking spaces which have been designated by an Owner to be "shared parking," all parking areas within the Project shall be for the exclusive use of the Owners and any tenants of the Owners, and their respective employees, customers, guests and contractors.

(b) There shall be no parking of any kind allowed on any lawn, median strip, walkway or any other unpaved area within the Project.

(c) Parking of vehicles of any type shall be restricted to designated parking areas, and no employees, agents, business invitees, tenants, guests or customers of any Owner shall be

permitted to park in areas not so designated, or on any street (public or private) within the Real Property, except for purposes of loading or unloading passengers or emergency repairs. All deliveries or loading and unloading of goods or materials shall be restricted to designated loading docks or similar facilities.

(d) No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment shall be conducted upon any street (public or private), or parcel, except wholly within a facility specifically designated for such purpose or within an enclosed building.

(e) The Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas in the Project not assigned to individual Parcels, if any, including without limitation designating "parking," "guest parking" and "no parking" areas thereon; and shall have the power to enforce all parking and vehicle use restrictions applicable to the Project, including the power to remove violating vehicles from any of the Project to the extent permitted by applicable law.

### **Section 5.3 Parking Enforcement**

The DRC, the Association and its property manager shall have the right to regulate and enforce parking within the Project, including each Owner's Parcel, in accordance with the terms and conditions of this Declaration, together with the rules and regulations established by the Board, if any. These parking and vehicular restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any Laws and shall not apply to any public or private transportation system providing passenger shuttle service within the Real Property which has been approved by Declarant or the Board, or to any construction activities.

## **ARTICLE VI DESIGN REVIEW COMMITTEE (DRC)**

### **Section 6.1 Design Review Committee**

No Structure shall be commenced, erected, placed, altered, or maintained upon any Parcel or Common Area, nor shall any exterior addition to or change or alteration, including exterior color, thereon or consolidating of Parcels be made until the complete plans and specifications showing the nature, kind, shape, height, and materials, including the color scheme and location of same shall have been submitted for approval to the DRC, or the Board, if the DRC has not been formed (reference to DRC shall also mean the Board if the DRC has not been formed or has been disbanded by the Board). DRC will not permit any work to be done that requires a building permit without the approval being conditioned on providing a copy of the building permit to the DRC before the work commences.

Until completion of construction of the Initial Structures, the provisions of this ARTICLE VI and, in particular this Section 6.1 shall not be applicable to any Structures (including, without limitation, the Initial Structures and any of the parking areas described in Section 5.1 hereof) commenced, erected, or maintained upon the Project by Declarant or any of its Affiliates, and Declarant and such Affiliates shall not be required to solicit or obtain the approval of the DRC and/or the Board, as applicable, for the commencement, erection or maintenance of any Structure upon the Real Property by Declarant or any of its Affiliates. For the avoidance of doubt, the commencement, construction, erection, and maintenance of the Initial Structures and the parking areas described in Section 5.1 hereof shall not require the approval of the DRC and/or the Board, as applicable.

The DRC may disapprove plans and specifications in its sole and absolute discretion. In any case where the DRC shall disapprove any plans and specifications submitted hereunder, or shall approve the

same only as modified or upon specified conditions, the DRC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

**Section 6.2 Members of DRC**

The DRC shall be composed of the Declarant or its representative until the Turnover Date. Thereafter, the DRC will be composed of the Board of Directors or of three (3) or more members appointed by the Board, as determined by the Board in its sole discretion. The members of the Board and the DRC shall be entitled to compensation in such amounts that may be determined by the Board from time to time for such services performed pursuant to this ARTICLE VI. Further, the DRC, may, in its sole discretion, delegate its duties to a third-party professional with all costs and expenses arising therefrom to be paid by the respective applicant.

**Section 6.3 Time for Approval**

Approval for use on any Parcel of any plans or specifications shall not be deemed to constitute the approval of such plans or specifications or any of the features or elements included therein for use on any other Parcel. Approval of plans and specifications relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, providing (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibitions contained in this Declaration, and (ii) that the plans and specifications approved, and any conditions attached to any such approval, have been adhered to and complied with in regard to all Structures and uses on the Parcel in question. In the event the DRC fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after the receipt thereof by it, then such location, plans and specifications or other requests shall be deemed **DISAPPROVED** by the DRC, and no explanation or statement of the grounds upon which such inaction was based shall be required.

**Section 6.4 Construction Without Approval**

If any Structure shall be altered, erected, placed or maintained upon any Parcel other than in accordance with the provisions of this ARTICLE VI, upon written notice from the DRC, any such Structure altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. The grade, level, or drainage characteristics of the Project or any portion thereof shall not be altered without the prior written consent of the DRC.

**Section 6.5 Inspection**

Any agent of the DRC may at any reasonable time or times enter upon and inspect any Parcel and any Structure thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of Structures thereon and the use or uses conducted thereon are in compliance with the provisions hereof; and neither the DRC nor any such agent will be deemed to have committed a trespass or other wrongful act by reason of such entry inspection.

If within fifteen (15) days after the date of notice of violation of this ARTICLE VI, the Owner of the Parcel upon which such violation exists or occurs shall not have taken reasonable steps to accomplish the removal or termination of the same, the DRC or the Association shall have the right, through its agents and employees, to enter upon such Parcel, and to take such steps as may be necessary to extinguish such violation. The DRC or the Association, as well as its agents, shall not thereby be deemed to have trespassed upon such Parcel and shall be subject to no liability to the Owner or Occupant of such Parcel for such entry

and any action taken in connection with the removal of any violation. The cost of any abatement or removal hereunder shall be a binding, personal obligation of such Owner, and may also be enforced by perfection of a Lien in the manner provided in Section 10.2 below.

**Section 6.6     Liability**

(a) No action by the DRC shall be deemed to constitute any representation or warranty as to the adequacy, safety soundness, compliance with Laws or fitness of any plans and specifications or of the proposed construction in accordance with such plans and specifications. Neither the DRC nor the Association, as well as their respective successors or assigns, nor any agent or employee of the DRC or Association, shall be liable for any damage, loss or prejudice suffered or claimed by an applicant or any third party on account of: (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications; (b) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (c) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; and (d) the development of any Parcel within the Project.

(b) Neither Declarant nor any member of the DRC or the employees or agents of Declarant acting as the DRC shall be liable for damages to anyone submitting plans to it for approval or to any Owner, Occupant or other person by reason of any: (i) mistake in judgment; (ii) negligence or nonfeasance arising in connection with the approval or disapproval of any plans; (iii) the execution and filing of an estoppel certificate; or (iv) the performance of any other duties of the DRC, contemplated by this Declaration, unless performed in bad faith. Anyone who submits plans to the DRC shall be deemed to have agreed by submission of such plans, and every Owner and Occupant by acquiring title and/or possessor rights to any Parcel, improvements or portion thereof agrees, that he will not bring any action or suit against Declarant, any member of the DRC or any other person for the recovery of damages by reason of any employees or agents of Declarant acting as the DRC by reason of such approval or disapproval of such plans or by reason of any mistake in judgment, negligence or nonfeasance arising in connection with the performance by the DRC of any duties contemplated by this Declaration.

**Section 6.7     Maintenance of Improvements**

Anything to the contrary in this Declaration notwithstanding, all Structures and other improvements constructed as approved by the DRC pursuant to this ARTICLE VI shall at all times thereafter be maintained by the Owner of each Parcel in a neat, clean, attractive and sound condition, substantially as originally installed or constructed. So long as this Declaration remains in effect, and regardless of whether Declarant continues to own any portion of the Project, there shall be no substantial alteration to the architectural style, color, layout or exterior appearance of any Structure, without the prior written consent of the DRC.

**Section 6.8     Design Guidelines**

The DRC may, but is not obligated to, adopt and implement design guidelines and development standards and criteria for the Real Property (the "**Design Guidelines**"), which may be amended by the DRC from time to time. The Design Guidelines, if any, shall be adhered to by all the Owners. The DRC will use the Design Guidelines in evaluating the proposed work and to facilitate administration of such work under this Article. A copy of any Design Guidelines adopted by the DRC will be available from the DRC or the Declarant upon request.

**Section 6.9 Resolution of Design Guidelines Conflict**

The Owners expressly acknowledge and agree that in the event of a conflict between the terms, conditions, covenants and provisions of this Declaration and the Design Guidelines, the terms, conditions, covenants and provisions of this Declaration shall control.

**Section 6.10 Fees**

The DRC may assess fees to applicants or others who require or use DRC services. If assessed, the fees shall reasonably reflect the costs and expenses of the DRC to perform its duties, including reasonable compensation to DRC members. The DRC may disapprove plans for failure of the applicant to prepay fees. Any fees which are assessed but not paid when due shall be deemed a Special Assessment (as defined in Section 9.4).

**Section 6.11 Construction Requirements**

Upon receipt of approval of its plans and specifications, any Owner or Occupant shall diligently proceed with the commencement and completion of all approved construction. Unless work on the approved construction shall be commenced one (1) year from the date of such approval and diligently pursued thereafter, then the approval shall automatically expire, except in cases where the DRC has given a written extension of time. The DRC may, as a condition of its approval, specify a different construction timetable for commencement and completion of all of any phase of improvement construction.

**Section 6.12 Prior Approval**

Approval of plans and specifications by the DRC may be secured prior to acquisition of a Parcel pursuant to the terms of a sale contract or lease.

**Section 6.13 Submittal and Inspection Requirements**

Information shall be submitted to the DRC in connection with its consideration of any development plans as stated in the DRC's Design Guidelines. Upon request, the DRC shall provide a submittal form which must accompany any plans and specifications submitted. Inspections may also take place as specified in the Design Guidelines, but the DRC is not required to inspect improvements.

**Section 6.14 Variances**

The DRC in its sole discretion may grant variances to the provisions of the Article and the standards of approval due to undue hardship, extraordinary or exceptional circumstances, or if the granting of the variance will not significantly undermine or adversely affect the intent and purposes of this Declaration. No variances granted by the DRC shall be deemed to create a variance from (or right of noncompliance with) any applicable ordinance, law, rule or regulation of a governmental agency with jurisdiction.

**ARTICLE VII  
EASEMENTS**

**Section 7.1 Reservation of Easements**

The term "Easement Area," as used herein, shall mean and refer to: (i) those areas on each Parcel with respect to which any easements may be now or hereafter created as shown on the Plat, including, but not limited to, the Roadway Easement or any recorded easement relating thereto; and (ii) the Common

Areas or Limited Common Areas. Non-exclusive easements and rights-of-way are hereby expressly reserved to the Association and Declarant and its Affiliates, together with their successors and assigns, in, on, over and under the Easement Area of each Parcel, for the erection, installation, construction and maintenance of poles, wires, lines and conduits and the necessary or proper attachments in connection with the transmission of communication, data, electricity, telephone, storm-water drains, land drains, public and private sewers, pipelines for supplying gas, water and heat, roadways, driveways, curb cuts, gutter, ingress, egress and for any other public or quasi-public utility facility, or functions. Declarant, its Affiliates, and their respective agents, successors and assigns, shall have the right to enter upon all parts of the Easement Area of each Parcel for any of the purposes for which the foregoing elements and rights-of-way are reserved with the coexistent responsibility of restoration of any improvements.

In addition, exclusive easements are hereby expressly reserved to Declarant, its Affiliates, and their successors and assigns in, on, over and under the Real Property for the purpose of exercising Declarant's and its Affiliates' rights set forth in Section 8.1.

### **Section 7.2 Owners' Grant of Easements**

Each Owner hereby grants easements to other Owners, provided that each Owner exercising such right received the written approval of the Association prior to each and every entry, and to the Association to enter onto each Parcel and to have utility companies enter onto Parcels to repair the plumbing, heating and electrical system located thereon; provided, however, the granting Owner shall be entitled to notice of such entry, by either telephone or hand-delivery at least 24 hours in advance, or by deposit of same in the United States mail at least 72 hours in advance, at the address provided by the granting Owner to the Association for such purposes. Entry onto a Parcel for emergency purposes, as determined by the Association or its property manager in their sole and absolute discretion, may be immediate. Any such entries shall be made with as little inconvenience as possible to the granting Owner, and any damage caused thereby shall be repaired by the entering party in a timely, workmanlike and professional manner, as determined by the Association in its sole and absolute discretion.

In addition, temporary construction easements are hereby expressly reserved to Declarant, its Affiliates, and their successors and assigns in, on, over and under Parcels to construct or repair utilities located thereon; provided, however, the granting Owner shall be entitled to notice of such entry, by either telephone or hand-delivery at least 24 hours in advance, or by deposit of same in the United States mail at least 72 hours in advance, at the address provided by the granting Owner to the Association for such purposes. Entry onto a Parcel for temporary construction purposes may be immediate in an emergency, as determined by Declarant or such Affiliate in its sole and absolute discretion.

### **Section 7.3 Reciprocal Easements for Use of Common Areas; Limited Common Areas**

Subject to Section 5.1, each of the Parcels and their respective Owners, Occupants, tenants and subtenants, and the agents, customers, licensees and invitees of each of them, is hereby granted a non-exclusive reciprocal right, privilege and easement upon and across the Common Areas, to use those portions of the Common Areas which, by their nature, are manifestly designed and intended for common use by the Occupants of the Project for pedestrian and vehicular ingress and egress, for the respective purposes for which such Common Areas are designed, and without limiting the generality of the foregoing, each of the Parcels and their respective Owners, tenants and subtenants, and the agents, suppliers, purveyors, customers, licensees and invitees of each of them, is hereby granted a nonexclusive reciprocal right, privilege and easement over, upon and across, the Roadway Easement, and other drives, driveways and sidewalks for vehicular and pedestrian ingress and egress.

Notwithstanding the foregoing to the contrary, the Declarant, for so long as the Declarant is also an Owner, shall have the right to restrict portions of the Common Area in the nature of an easement for the primary or exclusive use of one (or more, if applicable) Owners and its Occupants, tenants and subtenants, and the agents, customers, licensees and invitees of each of them by designating such areas as Limited Common Areas. Each of the Parcels and their respective Owners, Occupants, tenants, and the agents, customers, licensees and invitees of each of them, is hereby granted an exclusive right, privilege and easement upon and across the Limited Common Areas reserved exclusively for the use of a particular Parcel, for the respective purposes for which such Limited Common Areas are designed.

#### **Section 7.4     Utility Easements**

Each Parcel is hereby granted an underground easement across each of the other Parcels for utilities, including without limitation, electricity, water, gas, sewer, telephone, cable television and storm drains. No such utility easements shall be within any building footprint, or encroach upon any permanent improvements, and all such easements shall be situated so as to minimize damage, diminution in value or other negative impacts upon the burdened Parcel. The utility easements granted hereby are for the purpose of installation, testing, maintenance, replacement and/or repair of utility lines, conduits or other facilities; provided, however, that in using the easements granted hereby, any Owner who goes, or causes his agent or any utility company to go, upon any other Owner's Parcel shall (a) cause such use of its utility easement to be conducted in a manner which, under the circumstances, is the least disruptive to the other Owner, its tenants, and their respective invitees, customers and licensees, (b) cause such use to be completed with due regard for the safety of all persons coming onto such Parcel, and (c) cause, at its expense, any damage to the other Owner's improvements (including without limitation pavement) to be promptly repaired and restored as near as practicable to the prior condition of such improvement. Each such Owner shall be liable to such other Owner for any breach of the foregoing obligations, and each such Owner shall indemnify such other Owner and hold such other Owner free, clean and harmless from any and all claims, actions, demands, causes of action, costs and expenses whatsoever (including attorneys' fees and court costs) for any personal injury or property damage arising from or as a result of such Owner's use of a utility easement upon such other Owner's Parcel.

#### **Section 7.5     Drainage Easements; Detention Basin Easement**

Declarant has entered into and recorded, or may enter into and record, certain drainage and related easements on, over and across the Project, for the purpose of creating an integrated system for storm and surface water drainage within the Project. In addition, Declarant has entered into and recorded, or will enter into and record, an easement for the benefit of the Project with the Detention Basin Owner for use of the Detention Basin for storm and surface water drainage from the Project over, across and into the Detention Basin (the "**Detention Basin Easement**"). Declarant anticipates that the Detention Basin shall be maintained and repaired by the Association pursuant to the Detention Basin Easement, and the costs of which shall be included as a Common Expense.

Declarant reserves the right to create, in its sole and absolute discretion, and designate, from time to time, additional drainage easements over and upon each Parcel and/or the Project. These easements and rights expressly include the right to cut any trees, bushes or shrubbery to conduct construction and/or site work, or to take any other similar action reasonably necessary to provide and maintain reasonable health and appearance within the Project. The provisions of this Section 7.5 shall not be construed to impose any obligation upon Declarant to create any specific drainways within the Project.



**Section 7.6 Roadway Easement**

For purposes of creating and maintaining ingress and egress throughout the Project, each Owner for itself, its heirs, successors, and assigns does hereby grant to the Association the Roadway Easement for the purposes of installing and maintaining roads, driveways, curb cuts and ingress and egress throughout the Project and specifically over an Owner's Parcel as necessary. Each Roadway Easement shall run with the land and the Owner's title to the Parcel, and be binding on the Owner and its heirs, successors, and assigns and any Person who shall thereafter take title to the Parcel. The Association shall be responsible to create and maintain the improvements within the Roadway Easement and the costs therefor shall be paid by the Owners in accordance with Section 9.2. The Roadway Easement may be changed (expanded, contracted, reconfigured and/or relocated) as required by state or local governmental entities.

**Section 7.7 Maintenance Easements**

The Association, as well as its agents and employees, are hereby granted a non-exclusive right, privilege and easement over, upon and across each and every Parcel, to maintain the Common Areas and Limited Common Areas in accordance with the terms hereof, including without limitation the terms of Section 9.1.

**Section 7.8 Other Easements**

Declarant and the Association (together with their duly appointed agents) shall have an easement for full right of ingress and egress at all times within the Real Property for the exercise of rights under this Declaration and for the carrying out of their other rights, functions, duties and obligations as set forth in this Declaration. Any such entry by Declarant or the Association or their duly appointed agents upon the Real Property shall be made so as to minimize inconvenience to the affected Owner or Occupant as much as reasonably practical. Further, in addition to the rights given to the Association in this Declaration, there is hereby established a nonexclusive easement in perpetuity over, upon and across any Parcel for the benefit of Declarant, the Association, and their respective agents, employees and contractors for the following purposes:

(a) To inspect any Parcel to ascertain whether such Parcel, the Improvements thereon and the uses thereof are in compliance with the provisions of this Declaration;

(b) To erect, repair, replace and maintain monument signs and install, repair, replace and maintain any utility lines to such monument signs;

(c) For (i) planting, replacing and maintaining any such landscaping improvements upon any Common Area, and (ii) installing, repairing, replacing and maintaining any drainage and/or irrigation systems (including, without limitation, landscape wiring and conduits) upon any Parcel as shall reasonably be designated by Declarant or the Association in connection with such landscaping improvements or in connection with landscaping improvements on the Common Area or on other Parcels; provided, however, that such right and easement is limited to those portions of each Parcel located within forty (40) feet of the boundary lines of such Parcel;

(d) With respect to the easements established pursuant to this Section 7.8, the Association shall have the full and free right at all times to enter and re-enter the land thereby encumbered, with or without vehicles or on foot, and to come upon said land as often as it deems reasonably necessary to effectuate the purpose of such easements during reasonable hours and upon reasonable notice and subject to reasonable security and safety requirements.

**Section 7.9 Easements for the Benefit of Declarant**

In addition to the rights of entry and any other rights reserved by or granted to Declarant in this Declaration, there is hereby established the following non-exclusive easement over, upon, across and under the Common Area for the benefit of Declarant, its agents, employees and contractors for the purpose described below, which easement shall terminate at such time as Declarant no longer owns any Parcel. Declarant agrees that its rights under such easement shall be exercised in a manner so as to reasonably minimize, consistent with appropriate governmental requirements, the impact on the access and use (including the ability to construct improvements on the Parcel) by any Owner of its particular Parcel and the improvements thereon.

(a) For the purpose of completing the Common Area or Limited Common Area and any such construction thereon; the Declarant shall have the full and free right at all times to enter and re-enter the land thereby encumbered, with or without vehicles or on foot, and to come upon said land as often as it deems reasonably necessary to effectuate the purpose of such easement.

(b) For the purpose of maintaining such sales offices and signs as Declarant shall reasonably deem necessary or convenient in connection with Declarant's marketing of the Parcels or Improvements thereon.

**Section 7.10 Easements for the Benefit of Governmental Agencies and Public Utilities**

Certain easements (in perpetuity or otherwise) have been and may in the future be granted by Declarant to certain entities, including, without limitation, easements for sidewalks, open space, drainage, sewer and water lines and other utilities, which easements may affect all or some of the Parcels. Declarant shall be entitled, without the consent of any Owner, to grant any such future easements as it determines are in the best interests of the Project; provided, however, that such easements shall be limited only to the location, scope and size reasonably necessary to accomplish the stated purpose of such easement, or to comply with any relevant governmental requirements. Each Owner shall fully and faithfully comply with all requirements of said governmental or public agencies in connection with the easements granted pursuant to this Section 7.10. Declarant agrees that all such easements will be located so as to reasonably minimize, consistent with applicable governmental requirements, the impact on the access and use (including the ability to construct improvements on the Parcel) by any Owner of its particular Parcel and the improvements thereon and that no such easement will be located under any building footprint. Declarant further agrees that no such easement may be granted without the consent of the Owner of such Parcel if it will materially affect the value of such Parcel.

**Section 7.11 Systems Easement Areas**

Declarant may, in connection with the sale of any Parcel, reserve or grant easements for the construction, maintenance and operation of the following systems provided that such easements shall be only on those areas of the Parcel ("**Systems Easement Areas**") running parallel to any lot line of a Parcel with a depth of six feet (6') therefrom: roadways or streets, water drainage systems or structures, swales, natural drainage channels, sheet runoff, water mains or water sprinkler systems. Such reservation or grant may also indicate what portions of the Project ("**Benefited Areas**") shall have the benefit and use of such easements, swales, natural drainage channels and sheet runoff as may be installed above the ground level of such easement. In the event any Owner in any Benefited Area deems it to be necessary to cause the installation of a system permitted in appropriately designated Systems Easement Areas of any Parcel subsequent to the initial paving and improvement thereof, the Owners thereof shall not unreasonably withhold the granting of approval. The use of all or part of such Systems Easement Areas or rights of way

may be conveyed at any time by Declarant to any person, firm or governmental body furnishing such services or responsible therefor.

**Section 7.12 Sidewalk Landscape Area**

Declarant may, in connection with the development of the Project, reserve, enter into or grant easements for a sidewalk and associated trees, hardscape and other landscaping on that portion of the Project bordering Main Street (SR 126) (the "**Sidewalk Landscape Area**"). The use of all or part of such Sidewalk Landscape Area may be dedicated or otherwise conveyed at any time by Declarant in accordance with Section 14.1 below.

**ARTICLE VIII**  
**DECLARANT'S SPECIAL RIGHTS**

**Section 8.1 Special Declarant Rights**

Declarant for itself and its Affiliates hereby reserves all reasonable and necessary rights to complete the development of the Project in accordance with the plans and specifications approved by the applicable county and/or City authorities, including the rights:

- (a) to complete improvements indicated on any subdivision map describing the Real Property or otherwise required by law or by this Declaration;
- (b) to complete improvements on the Real Property described or depicted on any plans approved by the City or other governmental authorities with jurisdiction over the Project;
- (c) to maintain within the Project, including the Common Areas, management offices and facilities and signs advertising or identifying the Project;
- (d) to use easements through the Common Areas or Limited Common Areas for the purpose of making improvements within the Project;
- (e) to install billboards and master antenna or antennae systems; and
- (f) to maintain the Common Areas and Limited Common Areas and any other areas within the Project that are the responsibility of the Declarant or the Association, or any portions thereof, in accordance with this Declaration.

**Section 8.2 Transfer**

Any or all of the rights reserved to Declarant and its Affiliates pursuant to Section 7.1 and Section 8.1 may be transferred to other Persons; provided, however, that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and recorded in the Public Records.

**Section 8.3 Declarant's Construction Activities**

Declarant and its Affiliates, from time-to-time, are undertaking the work of constructing, developing, selling, and leasing the Project. The completion of that work is essential to the establishment and welfare of the Project as an attractive and desirable development. In order that such work may be

completed and the Project be established as a fully occupied high quality office/industrial park, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its Affiliates and their contractors or subcontractors from undertaking within the Project whatever is reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent Declarant, its Affiliates or their representatives from erecting, constructing, maintaining and repairing on any part or parts of the Project such Structures as may be reasonable and necessary for the conduct of its business of completing its work, establishing the Project as a high quality industrial, business, and commercial center and selling and/or leasing portions thereof;

(c) Prevent Declarant and its Affiliates in any other manner from conducting on any part of the Project its business of completing the Project as a high-quality development, and of selling and/or leasing the Project and/or portions thereof;

(d) Prevent Declarant and its Affiliates from maintaining such sign or signs within any part of the Project as may be necessary or desirable for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner or Occupant of its Parcel or the Common Areas, where a right to use the Common Areas, or portions thereof, has been granted; or

(e) Otherwise prevent Declarant and its Affiliates from exercising any of the rights set forth in Section 8.1.

Notwithstanding anything to the contrary contained in this Declaration, Declarant and its Affiliates make no representation or warranty, express or implied, with respect to the construction of the Project. Without limiting the generality of the foregoing, Declarant and its Affiliates disclaim (i) any obligation to construct any improvements, and (ii) any obligation to develop or cause the development of any portion of the Project. Although an Owner has or may have been advised of certain proposed, planned or intended development of the Project, Declarant and its Affiliates shall be under no obligation whatsoever to construct or develop any portion of the Project.

## ARTICLE IX COMMON AREAS AND ASSESSMENTS

### **Section 9.1 Maintenance of Common Areas and Utilities**

Without limiting its right to utilize funds received by it from all sources, including funds received pursuant to the provisions hereof, in any manner which the Board reasonably determines to be in the best interest of the Project, the Association shall maintain the Common Areas (including, without limitation, the Limited Common Areas) and shall do all things reasonable and appropriate and for the best interests of the Common Areas and the Project, including without limitation:

(a) cleaning, sweeping, removal of snow and ice, disposal of rubbish and debris and all other tasks necessary to maintain the Common Areas (including the Limited Common Areas) in a safe, clean and orderly condition;

(b) maintaining all Common Area landscaping, including making such replacements of shrubs and other landscaping as is necessary, keeping the landscape areas at all times adequately weeded, fertilized and watered, and maintaining, replacing irrigation systems as necessary;

- (c) maintaining any perimeter walls in a good condition and state of repair;
- (d) cleaning, sweeping, striping, sealing and resurfacing of the paved areas within the Common Areas (including Limited Common Areas), and maintaining appropriate directional signs and markers and any artificial lighting fixtures as may reasonably be required;
- (e) maintaining, repairing, replacing any utilities or facilities which may exist for the benefit of the Common Areas or all Parcels within the Project, including, without limitation, the Access Road Easements;
- (f) maintaining and repairing the Detention Basin in accordance with the Detention Basin Easement; and
- (g) maintaining adequate operating and/or replacement reserves.

### **Section 9.2     Allocation of Common Area and Limited Common Area Assessments**

Subject to Section 9.3 herein, the Association shall estimate, annually in advance, the amount of Common Expenses for the succeeding year, and said estimated Common Expenses shall be allocated among the Members, pro rata, based upon each Member's Proportionate Share, and assessed against each Member. Notwithstanding the foregoing, the Association may allocate Common Expenses (i) prior to the construction of any building on the Parcels based on the approximate gross aggregate square footage of the buildings or buildings to be constructed on said Parcels in accordance with plans approved by the City, and (ii) to some, but not all Parcels, if such Common Expenses relate to shared areas benefitting fewer than all Parcels. The Association shall allocate Common Expenses related to Limited Common Areas to the Parcel or Parcels, as the case may be, benefitted by such Limited Common Areas.

**"Proportionate Share"** shall mean a fraction, the numerator of which shall be the total aggregate square footage of the building or buildings legally entitled on a Lot (and, when completed, the actual square footage of the completed building or buildings), and the denominator of which is the gross aggregate square footage of all legally entitled buildings in the Project (and, when completed, the actual square footage of the completed buildings).

### **Section 9.3     Collection of Assessments**

The Association shall have the right to commence Common Area Assessments at such time as the Association incurs Common Expenses. No later than thirty (30) days prior to the commencement of such assessments, the Association shall notify each Member in writing of the estimated Common Expenses for the remainder of the current calendar year, and said notice shall contain a computation of each Member's Proportionate Share.

No later than thirty (30) days prior to the first day of each calendar year, the Association shall notify each Member in writing of the estimated Common Expenses for said succeeding calendar year and said notice shall contain a computation of each Owner's Proportionate Share. The estimated Proportionate Share of Common Expenses allocated to each Member for any calendar year shall be payable in monthly installments in advance, each installment equal to one-twelfth (1/12) of the Common Expenses allocated to said Member. The installment payment shall be due and payable on the first day of each month of said calendar year. An account shall be opened in the name of the Association at a federally insured banking institution, and all amounts received by the Association shall be promptly deposited therein. As promptly as practicable after the end of each calendar year, the Association shall determine the actual amount of all Common Expenses for the preceding year and shall allocate any deficits to the respective Owners in their

Proportionate Shares. The Association shall not be obligated to spend during any one calendar year all sums collected by it pursuant to the terms hereof during such calendar year. If a surplus has been collected, it shall be held in the Association account and shall be used to offset the future Common Expenses of the Association.

If at any time there is a deficit in the amounts collected by the Association, the Association may notify all of the Members of such deficit, which notice shall set forth the Proportionate Share of such deficit attributable to each Member, and said amounts shall be payable within thirty (30) days after delivery of said notice. If any Member shall fail to pay any Common Area Assessment when due, the Association shall give such delinquent Member a written notice of default. If any such delinquent Member has not paid all amounts due pursuant to such notice of default within ten (10) days after receipt of such notice, the Association shall have the right to establish and enforce a Lien for said amount plus interest thereon at the Default Interest Rate (together with all attorneys' fees and costs of collection) against such Parcel pursuant to the provisions of Section 10.2 hereof, or, at the election of the enforcing entity, to commence a civil action for the recovery of such sums pursuant to Section 10.3 hereof.

#### **Section 9.4     Special Assessments**

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, which may be payable in cash or installments over a time period as provided by the Association, a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of the Declarant (a "**Special Assessment**"); provided, however, after the Turnover Date, any such assessment must be approved by the vote or written consent of at least fifty-one percent (51%) of the total voting power of the Association. Notwithstanding anything herein to the contrary, if before the Turnover Date Declarant determines, in its sole and absolute discretion, that any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, benefits a specific Owner (a "**Benefited Owner**"), and not the entire Project, the Association may levy a Special Assessment, which shall be allocated to such Benefited Owner, for the cost of such construction, reconstruction, repair or replacement.

#### **Section 9.5     Taxes**

Each Owner shall pay, or cause to be paid, prior to delinquency, directly to the taxing authorities, all real property taxes and assessments which may be levied against such Owner's Parcel and all municipal, county, state or federal taxes assessed against any leasehold interest or any personal property of any kind owned, installed or used by each Owner or its tenants.

#### **Section 9.6     Personal Liability of Owner**

No Owner may exempt itself from personal liability for assessments levied by the Association, nor release the Parcel owned by it from the Liens and charges hereof by waiver of the use or enjoyment of any of the Common Areas or by abandonment of Owner's Parcel, or by the fact that it is not deemed a Member of the Association.

#### **Section 9.7     Association Books and Records**

The Association shall maintain current copies of this Declaration, Bylaws, any rules or regulations adopted by the Association, books, records and financial statements. The Association shall permit any Member to inspect the books and records of the Association during normal business hours.

**ARTICLE X**  
**VIOLATION OF RESTRICTIONS; ENFORCEMENT**

**Section 10.1    Removal of Violations; Liens**

If any nonmonetary violation or breach of any provisions of this Declaration shall exist on any Parcel, and the Owner of such Parcel shall not have taken reasonable steps to accomplish the removal or termination of the same within fifteen (15) days after written notice thereof to the Owner and any Mortgagee that has notified the Association of its interest in such Parcel, Declarant, its Affiliates and the Association shall have the right, through their agents and employees, to enter upon such Parcel with respect to any operation being conducted thereon, and summarily abate, remove and extinguish any thing or condition that may be or exist thereon contrary to the provisions hereof. Declarant, its Affiliates, the Association and any such agent, shall not thereby be deemed to have trespassed upon such Parcel and shall be subject to no liability to the Owner or Occupant of such Parcel for such entry, abatement or removal. The cost of any abatement or removal of violations authorized under this Section 10.1 shall be a binding, personal obligation of the Owner of the Parcel upon which such violation has occurred as well as a Lien upon such Parcel.

**Section 10.2    Enforcement of Liens**

In the event that Declarant, its Affiliates or the Association has incurred costs and expenses by reason of a violation under ARTICLE VI or Section 10.1 hereof or the breach of any other covenants contained herein, or in the event that any Owner is delinquent in the payment of any Common Area Assessments or any other monetary provisions of this Declaration, then Declarant, its Affiliates or the Association (as applicable) may establish a Lien against the violating Parcel, by recording a document in the Public Records which specifies the Parcel in violation, describes the nature of the violations and sets forth the amount of the delinquency. Declarant, its Affiliates or the Association (as applicable) shall not be deemed under any circumstances to have elected to establish such Lien unless and until the aforesaid document has been duly recorded in the Public Records. At any time after the Lien has been recorded and a copy thereof has been served upon the offending Owner or Owners, Declarant, its Affiliates or the Association (as applicable) may bring an action to foreclose the Lien upon the offending Parcel in any manner now or hereafter permitted by Utah law, including, to the extent permitted by applicable law, enforcement of such Lien pursuant to a sale conducted in accordance with the provisions of Utah Code §§ 57-8a-301 through 57-8a-311, inclusive, or any successor laws hereafter in effect. If Declarant, its Affiliates or the Association (as applicable) does not elect to create and enforce a Lien as aforesaid, it shall nevertheless have all of the rights set forth in Section 10.3 below.

The Lien provided in this Section shall not be valid as against a bona fide purchaser (or bona fide Mortgagee) of the Parcel in question unless the Lien shall have been filed in the Public Records prior to the recordation in the Public Records of the deed (or Mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such Mortgage); provided, however, that such purchaser (or Mortgagee) shall be subject, as fully as any other Owner or Occupant of any portion of the Project, to (i) any Common Area Assessments or Special Assessments, or the violation or breach of any other monetary provisions of this Declaration, accruing after such conveyance (or subjection) and (ii) any nonmonetary violation or breach of any provisions of this Declaration, whether occurring before or after such conveyance (or subjection). The Lien provided in this Section shall furthermore be subject to the provisions of any bona fide lease, pursuant to which the tenant thereunder has entered into possession prior to the recordation in the Public Records of the Lien.

**Section 10.3 Legal Action Upon Violation**

Whether or not Declarant, its Affiliates or the Association elects to establish and enforce a Lien against any offending Parcel, it may nevertheless bring a civil action against the applicable Owner or Owners to recover all costs, expenses and damages incurred or suffered in connection with a violation of any provision of this Declaration and/or to recover any delinquency. Moreover, violation of any provision of this Declaration may be enjoined, abated, restrained or otherwise remedied by appropriate legal or equitable proceedings. Any material violation or threatened material violation of this Declaration is hereby declared to be a circumstance which threatens Declarant, its Affiliates and the Association, as applicable, with an immediate, material and irreparable injury without adequate remedy at law, such that Declarant, its Affiliates or the Association (as applicable) shall be per se entitled to apply for and receive equitable relief, including, without limitation, a temporary restraining order, preliminary injunction and permanent injunction, mandatory or prohibitive. In the event of proceedings brought by any party or parties to enforce or restrain violation of any provision of this Declaration, or to determine the rights or duties of any Person hereunder, the prevailing party in such proceedings may recover a reasonable attorneys' fee to be fixed by the court, in addition to court costs and any other relief awarded by the court in such proceeding.

**Section 10.4 No Waiver**

The failure of any Person entitled to enforce any provision of this Declaration to do so shall in no event be deemed a waiver of the right of any such Person to enforce this Declaration thereafter. Waiver or attempted waiver of any provision hereof with respect to any Parcel shall not be deemed a waiver thereof as to any other Parcel, nor with respect to the Parcel in question in regard to any subsequent violation, nor shall the violation of any provision of this Declaration upon any Parcel affect the applicability or enforceability of this Declaration with respect to any other Parcel.

**ARTICLE XI  
ASSIGNMENT OF RIGHTS AND DUTIES; VOTING; ASSOCIATION**

**Section 11.1 Assignment by Declarant**

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned to any Person, which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such Person evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

**Section 11.2 Association; Members**

(a) Organization. The Association shall be established by Declarant or Declarant as a nonprofit Utah corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law or set forth in the Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall hold a meeting of the membership of the Association not less than once each calendar year.

(b) Membership Right. Only Owners, including Declarant, shall be Members of the Association. Each Owner shall automatically be a Member of the Association without the necessity of any further action on its part, and membership in the Association shall be appurtenant to and shall run with the ownership of the Parcel which qualifies the Owner thereof to membership in the Association.



(c) Voting Rights. Voting rights in the Association shall be allocated among all Members in accordance with their Proportionate Share (as determined for each Member pursuant to Section 9.2 hereof).

Notwithstanding the foregoing, until the Turnover Date, the area of all Parcels owned by Declarant and its Affiliates shall be multiplied by twenty (20) for purposes of determining Declarant's and such Affiliates' voting power vis-à-vis all Owners other than Declarant and its Affiliates.

At the Turnover Date, Declarant will assign to the Association all of Declarant's rights, powers, duties and reservations under this Declaration; provided, however, that Declarant and its Affiliates shall at all times retain the right to enforce the provisions of ARTICLE IV and ARTICLE VI hereof so long as this Declaration remains in effect, whether or not Declarant or any of its Affiliates holds title to any portion of the Real Property. Notwithstanding anything to the contrary contained herein, until the Turnover Date, the Declarant shall have the right to appoint all the members of the Board.

### **Section 11.3 Separation of Interest**

No Owner may sell, assign, lease, or convey its interest in the Association separate and apart from the Parcel.

### **Section 11.4 Prohibition of Partition**

Each of the Owners of a Parcel, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any other way severing or separating such Parcel from the Project. If any Parcel shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition, limited to a sale only, as between such co-tenants. No Parcel may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first mortgage on that Parcel.

### **Section 11.5 Powers and Authority of Association**

The Association shall have all of the powers of a nonstock, nonprofit corporation organized under the laws of the State of Utah in operating for the benefit of its members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of this Declaration, and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners or the Project.

### **Section 11.6 Duties of Association**

Subject to and in accordance with this Declaration, the Association shall have and perform each of the following duties for the benefit of the Members:

(a) The Association shall maintain the Common Areas (including the Limited Common Areas), collect Common Area Assessments, Special Assessments and enforce the Association's legal and/or lien rights set forth in this Declaration.

(b) The Association shall pay all Real Estate Taxes, to the extent that such Real Estate Taxes are not levied directly upon the Owners. The Association shall have all rights granted by law to contest the legality and the amount of such Real Estate Taxes.

(c) The Association shall obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, and as shall be necessary or expedient to carrying out the Association's functions. The Association shall be deemed trustee of the interests of all Members in all insurance proceeds, and shall have full power to receive and to deal with such proceeds.

(d) The Association shall adopt and enforce reasonable rules not inconsistent with this Declaration and amend the same from time to time relating to the use of the Common Areas and facilities situated thereon by Owners and by their tenants or guests, and the conduct of such Persons, including fines, with respect to the motor vehicle traffic and parking, disposal of waste materials, and other activities on a Parcel and Common Areas which, if not so regulated, might detract from the appearance of the Project, or offend or cause inconvenience or danger to Persons in the Project.

Such rules may also provide that the Owner or an Occupant of a Parcel who leaves personal property on the Common Areas in violation of the rules may be assessed to cover the expenses incurred by the Association in removing such property and storing or disposing thereof, after appropriate notice and an opportunity for a hearing before the Board and on approval of a majority vote of the Board. The Board may by majority vote suspend the voting rights of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board.

(e) The Association shall pay all charges for utilities provided to the Common Areas.

(f) The Association shall carry out all duties of the Association set forth in this Declaration, the Articles and Bylaws.

#### **Section 11.7 Assignment by Association**

The Association shall have the right, but not the obligation, to enter into a management agreement with Declarant or a property manager to manage the operation of the Project, including without limitation the collection of Common Area Assessments, Special Assessments, maintenance of the Common Areas, and enforcement of the Association's legal and/or lien rights contained herein. Any and all of the rights, powers and reservations of the Association herein contained may be assigned to a property manager which will assume the duties of the Association pertaining to the particular rights, powers and reservations assigned, and upon such property manager's evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Association herein.

#### **Section 11.8 Allocation of Management Costs**

The costs associated with the management agreement and property manager (the "**Management Costs**") shall be charged as a Common Expense. As promptly as practicable after the end of each calendar year, the Association shall determine the actual amount of the Management Costs incurred to manage the operation of the Project for the preceding year, and any difference from the estimated Management Costs previously allocated as a Common Expense shall be added to, or subtracted from, the future Common Expenses of the Association.

**Section 11.9 Successor Associations**

In the event that the Association, as a corporate entity, is dissolved, a nonprofit unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of said unincorporated association shall be governed by the laws of the State of Utah and, to the extent not inconsistent therewith, by the Articles and Bylaws as if they were created for the purpose of governing the affairs of an unincorporated association.

**Section 11.10 Limitations**

(a) No director, officer, committee member (including, without limitation, a member of the DRC), employee or other agent of the Association, (including, without limitation, the Declarant or any agent of the Declarant when acting in such capacity) (each, an "Association Agent"), shall be liable to any Owner or Occupant or any other person or entity (including, without limitation, the Association), for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of any such Association Agent if such Association Agent has acted in good faith and in a manner such Association Agent reasonably believed to be in the best interests of the Association.

(b) The Association shall indemnify each Association Agent, and defend such Association Agent against any liability for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such Association Agent if such Association Agent has acted in good faith and in a manner such Association Agent believed to be in the best interests of the Association.

(c) If any such Association Agent is also a director, officer or employee of Declarant or an affiliate of Declarant, then, in addition to the foregoing Section 11.10(b), Declarant hereby agrees to indemnify such Association Agent and to defend such Association Agent against any liability for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence by such Association Agent in performing his duties on behalf of the Association.

(d) In addition to the foregoing Section 11.10(c), Declarant hereby agrees to indemnify any director, officer or employee of Declarant against any liability for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence by such director, officer or employee in representing Declarant in Declarant's dealings with the Association, the Owners or the Project.

(e) The indemnities set forth in Section 11.10(c) and (d) hereof shall continue only for so long as Declarant or any affiliate of Declarant owns any Parcel.

**ARTICLE XII  
INSURANCE; DESTRUCTION; CONDEMNATION**

**Section 12.1 Liability Insurance**

The Association shall, throughout the term of this Declaration, maintain a policy or policies of public liability insurance with a combined single limit for injury or death to persons or damage to property occurring on the Common Areas in such amounts as the Association, in its sole and absolute discretion, may require. Each Owner shall, throughout the term of this Declaration, maintain at its sole expense, a policy or policies of public liability insurance with a combined single limit for injury or death to persons or damage to property occurring on such Owner's Parcel, including any Common Areas thereon, in such amounts as the Association, in its sole and absolute discretion, may require. The Association shall be an additional insured on each such policy. The insurance required in this Section 12.1 shall be carried by a

by a reputable, insurance company or companies qualified to do business in the State of Utah. The insurance required to be carried pursuant to this Section 12.1 may be carried under a "blanket" policy or policies covering other properties of the Owner and its subsidiaries, controlling, or affiliated corporations; provided that such "blanket" policy or policies otherwise comply with the provisions of, and in no event shall result in a reduction of the required limits of coverage for, such insurance. Each Owner shall, upon written request from the Association, furnish to the Association certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section. Each Owner and the Association hereby waive any rights of recovery against any other Owner and Occupants for any damage or consequential loss covered by those policies, against which the Owner is protected by insurance, to the extent of the proceeds payable under those policies, whether or not that damage or loss shall have been caused by any acts or omissions of the other Owner or Occupants.

### **Section 12.2 Casualty Insurance**

Each Owner shall also, throughout the term of this Declaration, maintain at its sole expense, a policy or policies of fire and casualty insurance covering all Structures on such Owner's Parcel, in an amount as near as possible to the full replacement value thereof, which shall provide for the replacement and restoration of such Structures in the event of a fire or other casualty. Likewise, the Association shall, throughout the term of this Declaration, maintain a policy or policies of fire and casualty insurance covering all Structures and improvements located on the Common Areas, in amounts as near as possible to the full replacement value thereof, which shall provide for the replacement and restoration of such Structures in the event of a fire or other casualty. Any such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 12.1.

### **Section 12.3 Damage to or Destruction of Improvements**

If any Structure within the Real Property shall be damaged by fire, elements or other casualty, the Owner of the Parcel on which such Structure is located shall, at such Owner's own expense, cause such damage to be repaired or replaced. If any Structure located on and comprising part of the Common Areas shall be damaged by fire, elements or other casualty, the Association shall cause such damage to be repaired or replaced and the costs for such repair or replacement, if not fully covered by insurance required to be maintained herein, shall be deemed Common Expenses and assessed to the Owners in accordance with the provisions of ARTICLE IX. Any rebuilding, repair or restoration undertaken pursuant to this Section shall be completed forthwith, and in any event within twelve (12) months after such casualty shall have occurred and shall be conducted in a manner so as to result in a minimal interruption of the businesses conducted by Owners within the Project.

### **Section 12.4 Condemnation**

In the event of any condemnation (or sale under threat of condemnation) by any duly constituted authority of all or any part of the Project, that portion of the award attributable to the value of the land and Structures so taken shall be payable only to the Owner(s) thereof. In the event of partial taking of any Parcel(s), the Owner(s) thereof shall promptly repair and restore the remaining portion of the Parcel as nearly as practicable to its condition immediately prior to such taking; provided, however, that an Owner of a Parcel which has been partially condemned shall not be obligated to repair or restore the remaining portion of the Parcel if such repair and restoration would not be commercially reasonable. In such event, the Owner of the Parcel whose property has been taken by the condemnation shall promptly raze such remaining area and cause it to be paved or landscaped (as appropriate).

**ARTICLE XIII**  
**MORTGAGEE PROTECTION CLAUSE**

**Section 13.1 Effect of Mortgage and Subordination of Security Interests**

The lien of the assessments (and any other Lien) provided for herein shall be subordinate to the lien of any Mortgage. The sale or transfer of any Parcel shall not affect the assessment Lien; provided, however, the sale or transfer of any Parcel pursuant to a foreclosure or any proceeding in lieu thereof by the Mortgagee shall extinguish the Lien of such assessments as to payments which become due for a period prior to such sale or transfer. No Mortgagee under any Mortgage shall be liable for the payment of any obligations under this Declaration, except those obligations accruing after such Mortgagee obtains title to a Parcel by foreclosure, trustee's sale, voluntary conveyance in lieu of foreclosure or otherwise. Any Mortgagee under a Mortgage who obtains title to a Parcel, and any purchaser at a foreclosure sale under such Mortgage, shall take title to such Parcel free and clear of any claims for unpaid obligations and liens therefor that accrued hereunder prior to such acquisition of title. Any such Mortgagee or such purchaser who so acquires title to a Parcel shall only be liable for obligations accruing under this Declaration with respect to such Parcel after the date of such foreclosure sale. No such sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the Lien thereof. The foregoing subordination shall not relieve an Owner whose Parcel has been subjected to a Mortgage from the personal obligation to pay all assessments and charges falling due during the time when the Owner is or was the owner of such Parcel.

**Section 13.2 Security Interest Protection**

(a) No breach of the covenants, conditions or restrictions in this Declaration, nor the enforcement thereof or of any lien provision herein, shall impair, defeat, eliminate or render invalid a lien against any Parcel or any portion thereof or interest therein of any Mortgage. However, all of the covenants, conditions, and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale, or otherwise.

(b) The Common Areas may not be pledged, hypothecated or transferred without the approval of all Mortgagees secured by the Parcels.

(c) No amendment may change the ratio of assessments against a Member unless such Member shall have obtained the prior written approval of all first Mortgagees of any Owners in the applicable Parcel.

**Section 13.3 Mortgagee Notice and Right to Cure**

A Mortgagee, during such period of time as such Mortgage shall be of record in the Public Records, shall be entitled to receive notice of any default by the maker of a Mortgage (the "Mortgagor Owner") (including notice of a default which would entitle another Owner to exercise self-help), provided that prior to the giving of the notice of default such Mortgagee shall have delivered to the Declarant or Association, as applicable, a notice that it is a Mortgagee hereunder and its notice address. In the event that any notice shall be given of the default by the Mortgagor Owner upon whose Parcel to which the Mortgage applies under this Declaration, a copy thereof shall be delivered such Mortgagee, and such Mortgagee shall thereafter have all rights (but not the obligations) of the Mortgagor Owner to cure a default by the Mortgagor Owner. Failure to deliver a copy of such notice to such Mortgagee shall in no way affect the validity of the notice of default to the Mortgagor Owner but shall make the same invalid as it respects the

interest of the Mortgagee in and to the Parcel or Mortgage and such failure shall result in the default not being binding upon the Mortgagee who has not received such notice or upon any party who acquired the Parcel by foreclosure or deed in lieu of foreclosure. A Mortgagee shall be permitted to cure any such default within 45 days after a copy of the notice of default shall have been received by such Mortgagee, provided that, in the case of a default which cannot with diligence be remedied within such period of 45 days, if it has notified the other Owners that it is curing the default and if it has promptly commenced within the 45 day period and has proceeded and is proceeding with all due diligence to remedy such default, then such Mortgagee shall have such additional reasonable period of time as may be necessary to remedy such default.

**Section 13.4 Condemnation**

If any Parcel or portion thereof, or the Common Areas and facilities or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, no provision of this Declaration, the Articles, or the Bylaws, or equivalent documents will entitle the Owner of a Parcel to priority over a holder of any first mortgage lien or equivalent security interest on a Parcel with respect to any distribution except relocation funds from the proceeds of any award or settlement.

**ARTICLE XIV  
DEDICATION, ANNEXATION AND DEANNEXATION**

**Section 14.1 Dedication**

(a) Notwithstanding any other provision of this Declaration, Declarant hereby reserves to itself, acting alone, the right to dedicate, release, alienate or otherwise transfer to the County or the City, if acceptable to such entity, all or any portion of any private street from time to time comprising a part of the Common Area and connecting any two public thoroughfares, for such purposes and upon such terms as Declarant in its sole discretion, reasonably exercised, deems fit. Similarly, and subject to the provisions of this Declaration, Declarant reserves to itself, acting alone, the right to dedicate, release, alienate or otherwise transfer by easement or otherwise to the County or City, if acceptable to such entity, any real property in the Development owned by Declarant, including, without limitation, the public trail to be constructed along Kays Creek.

(b) The Owners shall each, to the extent necessary, join in the execution of such instruments as Declarant, in its sole discretion, determines are desirable or required in order to effectuate widening of the peripheral streets, the installation of utilities, and the granting of easements on, under, over, across and through portions of their respective Parcels for purposes of such widening and installations.

**Section 14.2 Annexation Pursuant to Approval**

The Annexable Property, or portion thereof, may be annexed into the Project and made subject to this Declaration and the jurisdiction of the Association with the consent (by vote or written consent) of the owner(s) of the Annexable Property and Owners owning not less than two-thirds (2/3) of the Parcels in the Project. Notwithstanding the foregoing, subject to having obtained the prior written consent of the owner(s) of the Annexable Property, Declarant reserves, to itself and its Affiliates, the right to annex all or a portion of the Annexable Property prior to the Turnover Date without the consent or approval of any other Owners. In the event all or a portion of the Annexable Property is annexed into the Project as provided in this Section and in Section 14.3, the instrument of annexation or amendment to the Declaration shall contain such

easements and rights of way to integrate and provide access to, from and across the Annexable Property and the rest of the Project as mutually approved by the owner(s) of the Annexable Property being annexed and the Declarant (if prior to the Turnover Date) or the Association (if after the Turnover Date). The additions authorized under this Section shall be made by recording a notice of annexation (or similar instrument) with respect to the applicable Annexable Property, which instrument shall be executed by Declarant and the owner(s) of the Annexable Property affected by such notice of annexation. Recordation of such instrument shall extend the terms, conditions, covenants, restrictions, easements and other provisions contained in this Declaration to such additional real property and thereupon such additional real property shall constitute part of the Project. Declarant and the owner(s) of the Annexable Property have entered into that certain Reciprocal Easement and Maintenance Agreement of approximate even date herewith (the "**Reciprocal Easement**"), pursuant to which Declarant and the owner(s) of the Annexable Property, among other things, granted reciprocal easements for ingress and egress over and across portions of the Property and the Annexable Property as provided therein. Notwithstanding anything herein to the contrary, in the event the Annexable Property, or any portion thereof, is annexed into the Project as provided herein, the Reciprocal Easement shall terminate as to the Property and Annexable Property, or portion thereof, that is annexed into the Project; provided, however, that in the event the Annexable Property, or portion thereof, is not annexed into the Project, the Reciprocal Easement shall remain in full force and effect with respect to the Annexable Property or any portion thereof not annexed into the Project.

#### **Section 14.3 Declaration of Annexation**

Any instrument of annexation contemplated above may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such instrument of annexation, merger or consolidation, revoke, modify or add to the covenants established by this Declaration with respect to the real property already subject to this Declaration without the written consent and approval of the Owners of such real property.

#### **Section 14.4 Deannexation—General Provision**

Declarant may at any time or from time to time during the pendency of this Declaration remove real property from the real property which is covered by this Declaration; provided, however, that no such removal shall be consummated which would have the effect of limiting, curtailing or eliminating any easement rights benefiting the Parcel of any Owner unless the Member representing all such affected Owners approve such removal. Upon the recording of a certificate of deannexation of real property containing the provisions set forth in Section 14.5 of this ARTICLE XIV, this Declaration shall no longer apply to the deannexed real property.

#### **Section 14.5 Certificate of Deannexation**

The certificate of deannexation of real property which is referred to in Section 14.4 of this ARTICLE XIV shall contain, without limitation, the following provisions:

- (a) a reference to this Declaration, which reference shall state the date of recording hereof and the document number hereof in the records of Davis, Utah;
- (b) a statement that the provisions of this Declaration shall no longer apply to the deannexed real property in the manner set forth in Section 14.4;
- (c) an exact legal description of the deannexed real property; and

(d) such additional matters as the Declarant may desire to state in the certificate.

**Section 14.6 Limitation on Dedication and Annexation**

Neither any dedication by Declarant pursuant to Section 14.1 nor any annexation by Declarant pursuant to Section 14.2 nor any complementary addition or modification established by Declarant pursuant to Section 14.3 shall either;

(a) unreasonably revoke, unreasonably modify, or unreasonably add to the restrictions, reservations of easements, equitable servitude's or other limitations established under this Declaration, or

(b) have the effect, in Declarant's judgment, reasonably exercised, or materially overburdening any portion of the Common Area.

For the purposes of clarity, the determination of whether a revocation, modification or addition is reasonable shall be made by Declarant in its sole but reasonable discretion.

**ARTICLE XV  
GENERAL**

**Section 15.1 Interpretation**

The provisions of this Declaration shall be liberally construed together, to effectuate the purpose of creating a uniform plan for the development and operation of the Project. All provisions shall be construed so as to be in conformance with, and shall be governed by, Utah law.

**Section 15.2 Enforcement**

The Association, or any Member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, Liens, and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or any Articles of Incorporation or equivalent documents, and the court may award costs and reasonable attorneys' fees to the prevailing party. Failure by the Association or by any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 15.3 Severability**

The determination by any court that any provision of this Declaration is unlawful, void or unenforceable shall not affect the validity of any other provisions hereof; and no such determination that any provision hereof is inapplicable or unenforceable as to any particular Parcel shall affect the applicability of enforceability of that provision or any other provision hereof to any other Parcel.

**Section 15.4 Waiver of Reversionary Right**

This Declaration shall not be construed as conditions, or creating a possibility of reverter, and no provision hereof shall be deemed to vest in the Declarant or any other Persons any reversionary interest with respect to any Parcel. Any such reversionary right is hereby expressly waived by Declarant and Declarant.



**Section 15.5 Effect of Headings**

The headings of the Articles and Sections herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

**Section 15.6 Conflict with Applicable Laws**

This Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or any laws, ordinances or regulations of any governmental authority, or by specific restrictions imposed by any deed. In the event of any conflict, the most restrictive provision of same shall be taken to govern and control.

**Section 15.7 Remedies Cumulative**

Each remedy provided in this Declaration is cumulative and not exclusive.

**Section 15.8 Attorneys' Fees**

In the event of any action to interpret or enforce the terms and provisions of this Declaration, the prevailing party or parties shall be entitled to its costs and reasonable attorneys' fees from the non-prevailing party or parties.

**Section 15.9 Notices**

Any notice, demand, request or other communication required or appropriate hereunder shall be in writing and shall be given by hand-delivering the same in person or by depositing the same in the United States mail, registered or certified, return receipt requested, postage prepaid. All notices sent by mail as aforesaid shall be addressed as follows:

If to Declarant: WIINKEL ROCK, LLC  
c/o Rockworth Companies  
4655 S. 2300 E., Suite 205  
Holladay, Utah 84117  
Attn: Tom Henriod

With a copy to: Dentons Durham Jones Pinegar P.C.  
3301 N. Thanksgiving Way, #400  
Lehi, Utah 84043  
Attn: Brian C. Cheney

If to the Association: To Declarant if prior to Turnover Date. If after Turnover Date, to the address of the current principal office of the Association.

**ARTICLE XVI  
WATER RIGHTS**

**Section 16.1 Obligation to Conserve**

Water conservation and air quality is and will be of concern to Declarant and all Owners or Occupants of the Real Property or any portion thereof. The Association or DRC may, from time to time, promulgate certain rules, regulations, or guidelines pertaining to water use and air quality. Owners and

Occupants expressly covenant and agree that they will abide by and obey any such rules, regulations or guidelines. Without limiting the generality of the foregoing, no Owner or Occupant (or agent thereof) shall waste or unnecessarily use any water or water rights for or appurtenant to the Real Property or any portion thereof. All Owners and Occupants (or agents thereof) shall utilize such water or water rights reasonably and beneficially and in accordance with existing permit conditions and regulations. Owners and Occupants (or agents thereof) shall take affirmative measures to conserve water, in accordance with applicable state and local requirements, including, without limitation, the following:

- (a) use of water conservation devices, including, without limitation, inline aerators and flow restrictors;
- (b) use of reclaimed effluent where available and appropriate, and installation of separate, dedicated water lines for nonpotable water (e.g., effluent or untreated surface water) for all irrigation needs on the Parcel; and
- (c) review and upgrade of water management practices.

#### **Section 16.2 Nonpotable Water**

Declarant hereby reserves to itself, together with the right to grant and transfer the same, the right to own and use any nonpotable water existing on the Real Property (including effluent from any sewer plant or septic system), and to specify that nonpotable water (e.g., untreated surface water, effluent) shall be utilized for certain purposes, including, without limitation, irrigation of Common Areas, Landscaping and associated manufacturing uses (e.g., washing, cooling).

### **ARTICLE XVII SUBSEQUENT PURCHASERS**

After the date of recording hereof, any successor in interest to Declarant or any Owner shall take the Real Property or any interest therein subject to the provisions of this Declaration, the authority of the Association and the DRC (including, without limitation, any articles of incorporation, bylaws, or rules and regulations promulgated thereby), together with any changes, amendments or alterations to the same.

### **ARTICLE XVIII MISCELLANEOUS PROVISIONS**

#### **Section 18.1 Constructive Notice and Acceptance**

Every person who now or hereafter owns or acquires right, title or interest in and to any portion of the Real Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

#### **Section 18.2 Mutuality, Reciprocity; Runs With Land**

All restrictions, covenants and agreements herein contained are made for the direct, mutual and reciprocal benefit of each and every part and parcel of the Real Property; shall create mutual, equitable servitudes upon each portion of the Real Property in favor of every other portion of the Real Property; and shall create reciprocal rights and obligations between the respective Owners of all portions of the Real Property and privity of contract and estate between all grantees of said parcels, their heirs, successors, and assigns.

In addition, all restrictions herein contained shall operate as covenants running with the land for the benefit of the Real Property and each and every portion thereof and shall inure to the benefit of all grantees of the Real Property and each and every portion thereof, their heirs, successors and assigns, and shall apply to and bind the grantees of the Real Property and each and every portion thereof, their heirs, successors and assigns.

**Section 18.3 Section Headings**

Section headings where used herein are inserted for convenience only are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular sections to which they refer.

**Section 18.4 Effect of Invalidation**

If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

**Section 18.5 Effect of Declaration**

This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

**Section 18.6 Personal Covenant**

To the extent the acceptance of a conveyance of a Parcel creates a personal covenant between the Owner of such Parcel and Declarant, Association, the Members or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner with respect to matters occurring or arising subsequent to such Owner's ownership except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

**Section 18.7 No Surcharge**

The improvement, annexation, division or redivision of the Real Property shall not be deemed a surcharge of the easements benefitting such Real Property or the Common Area and any said easements shall at all times be appurtenant to each and every parcel into which the same may from time to time be divided or redivided.

**Section 18.8 Not a Public Dedication**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Real Property to the County or general public, or for the general public or for any public purpose whatsoever, and this Declaration shall be strictly construed to and for the purposes expressly stated herein.

**ARTICLE XIX  
GRANTEES' COVENANT**

Each grantee, tenant or other Person in interest, accepting a deed to any Parcel, or accepting an interest in any Parcel, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by this Declaration and to

incorporate this Declaration by reference in any deed or other document of conveyance of any or all or any portion of his interest in any real property subject hereto.

*[execution page follows]*

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

**DECLARANT:**

WINKEL ROCK, LLC,  
a Utah limited liability company

By: Rockworth Companies, LLC  
Its: Manager


By:   
Name: Tom Henriod  
Title: Manager

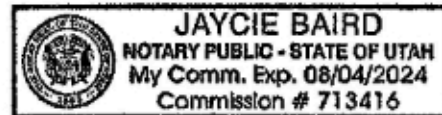
STATE OF UTAH )

COUNTY OF SALT LAKE )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, a Notary Public, by Tom Henriod, the Manager of Rockworth Companies, LLC, as Manager of WINKEL ROCK, LLC, a Utah limited liability company, this 16 day of ~~September~~, 2023.  
*November*

WITNESS my hand and official seal.

  
NOTARY PUBLIC  
My Commission Expires: 8/04/2024



List of Exhibits

- Exhibit A – Legal Description of Real Property
- Exhibit B – Map
- Exhibit C – Depiction of Annexable Property
- Exhibit D – Detention Basin
- Exhibit E – Parking Areas

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL PROPERTY**

\*That certain real property located in Davis County, State of Utah, more particularly described as follows:

ALL OF LOTS 1, 2, AND 3 OF LAYTON STATION PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE, RECORDED OCTOBER 26, 2023 AS ENTRY NO. 3548782 IN BOOK 8367 AT PAGE 478.

**EXHIBIT B**

**MAP**

[SEE ATTACHED]





**EXHIBIT C**

**DESCRIPTION AND DEPICTION OF ANNEXABLE PROPERTY**

A REMAINDER PORTION OF THAT CERTAIN PARCEL CITED AS PARCEL 3 IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JUNE 15, 2017, AS ENTRY NO. 3026774 IN BOOK 6787 AT PAGE 1106, SAID REMAINDER PORTION BEING DESCRIBED BY SURVEY AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE 15, SAID POINT BEING ON THE ARC OF A 1759.90 FOOT NON TANGENT RADIUS CURVE TO THE RIGHT, SAID POINT BEING SOUTH 397.08 FEET AND WEST 954.48 FEET FROM THE NORTH QUARTER CORNER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING SEVEN COURSES: 1) SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 8°16'26" A DISTANCE OF 254.14 FEET, CHORD BEARS SOUTH 33°06'49" EAST 253.92 FEET TO A POINT ON THE ARC OF A NON TANGENT 1483.17 FOOT RADIUS CURVE TO THE RIGHT, 2) SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°22'06" A DISTANCE OF 320.17 FEET, CHORD BEARS SOUTH 11°40'53" EAST 319.55 FEET TO A POINT ON THE ARC OF A 1488.00 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT, 3) SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH AN CENTRAL ANGLE OF 4°07'57" A DISTANCE OF 107.32 FEET, CHORD BEARS SOUTH 7°24'45" EAST 107.30 FEET, 5) SOUTH 11°22'49" EAST 61.69 FEET, 6) SOUTH 5°45'45" EAST 244.88 FEET TO A POINT OF CURVATURE, 7) SOUTHWESTERLY ALONG THE ARC OF A 86.00 RADISU CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 17°08'22" A DISTANCE OF 25.73 FEET, CHORD BEARS SOUTH 2°48'34" WEST 25.63 FEET; THENCE SOUTH 85°35'48" WEST 327.03 FEET, THENCE NORTH 28°01'28" WEST 111.92 FEET; THENCE SOUTH 63°59'06" WEST 94.83 FEET TO A POINT ON THE WESERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE NORTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING SEVEN COURSES: 1) NORTH 26°52'51" WEST 186.33 FEET TO A POINT OF CURVATURE, 2) NORTHEASTERLY ALONG THE ARC OF A 134.50 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 32°01'58" A DISTANCE OF 75.20 FEET, CHORD BEARS NORTH 10°52'03" WEST 74.22 FEET TO A POINT ON THE ARC OF A 142.82 FOOT NON TANGENT RADIUS CURVE TO THE RIGHT, 3) NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°32'40" A DISTANCE OF 13.82 FEET, CHORD BEARS NORTH 8°05'10" EAST 13.82 FEET, 4) NORTH 9°55'47" EAST 85.28 FEET TO A POINT ON THE ARC OF A 22.86 FOOT NON TANGENT RADIUS CURVE TO THE RIGHT 5) NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°48'05" A DISTANCE OF 19.07 FEET, CHORD BEARS NORTH 31°41'17" EAST 18.52 FEET, 6) NORTH 88°32'17" EAST 14.77 FEET, 7) NORTH 1°35'03" WEST 49.37 FEET, THENCE NORTH 1°35'03" WEST 46.21 FEET; THENCE NORTH 25°24'32" WEST 205.85 FEET; THENCE NORTH 64°35'28" EAST 81.55 FEET; THENCE NORTH 47°38'55" EAST 386.32 FEET TO THE POINT OF BEGINNING

CONTAINS 408,564 SQ. FT. 9.380 ACRES, STATE PLAIN ROTATION, CLOCKWISE 0°21'19"

This map is provided solely for the purpose of assisting in locating the property and Cottonwood Title Insurance Agency, Inc. assumes no liability for variation, if any, with any actual survey.

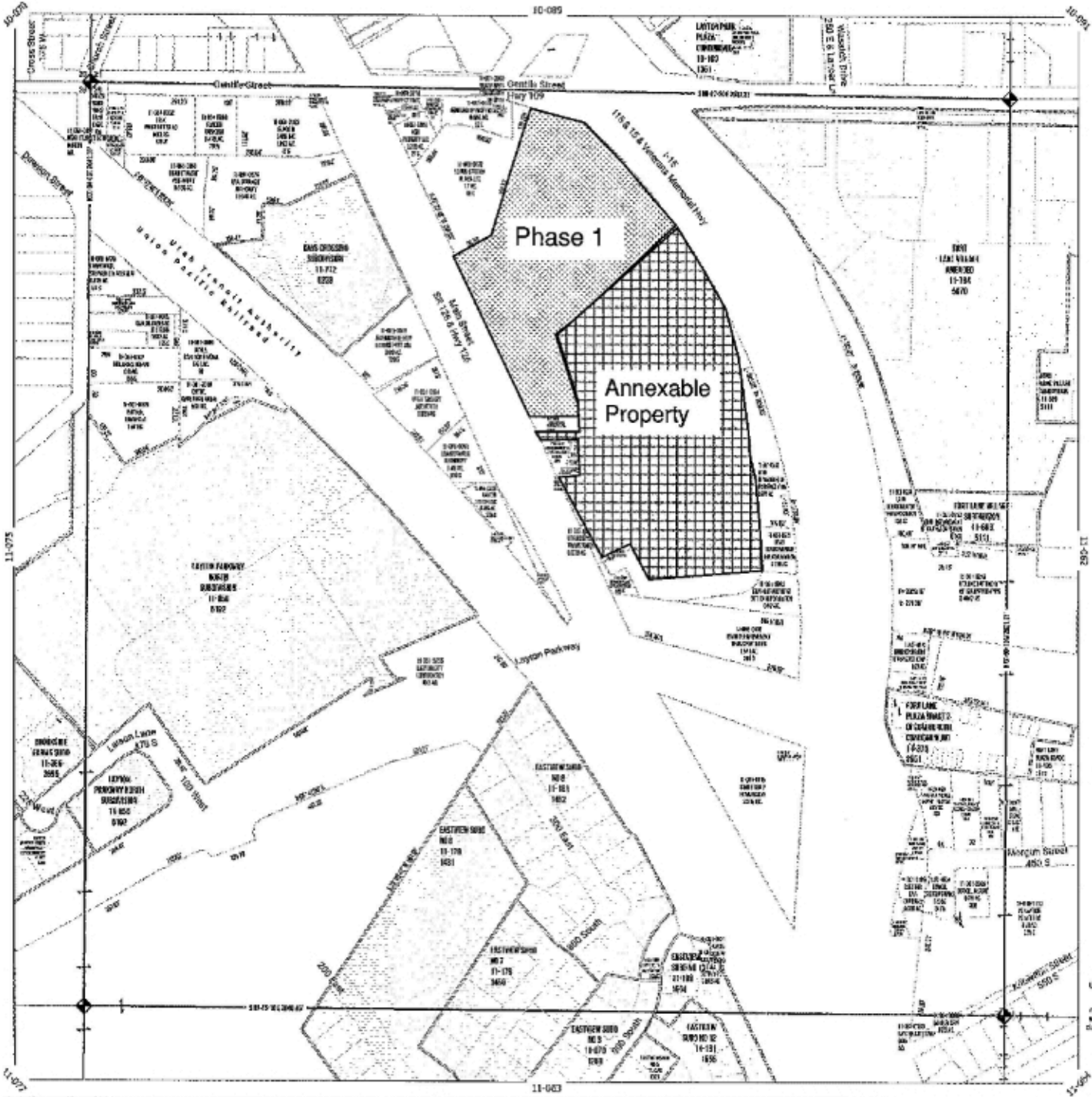
NW Quarter  
Section 28  
4N 1W

S.L.B. & M.

Tax ID Prefix

11 - 061

Sheet 1 of 1



1 inch = 200 feet



NOTE: Streams, bearings and  
 radius values are approximate.  
 Users should refer to the recorded  
 legal descriptions for exact  
 bearings and distances. For  
 additional and more information,  
 see the declaration and original  
 descriptions in recorded documents.



MapScale: 11/1/02

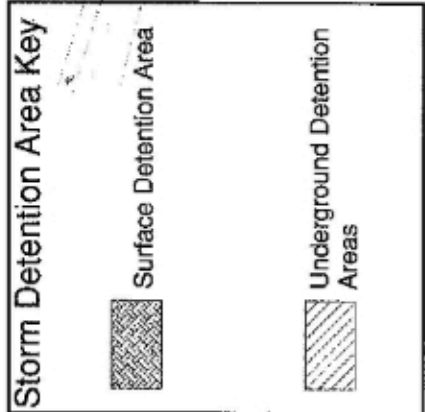
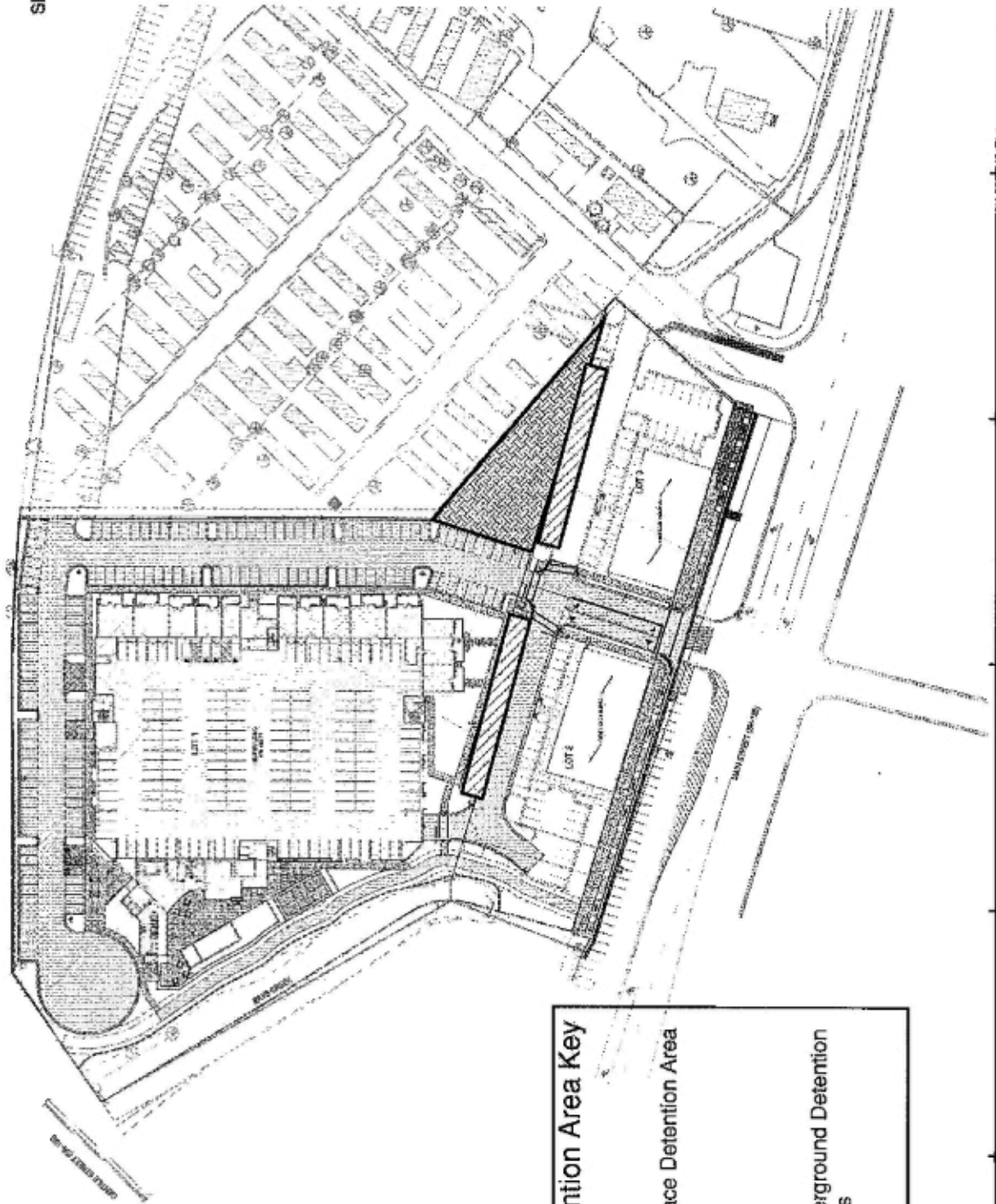
**EXHIBIT D**  
**DETENTION BASIN**

# LAYTON MIXED-USE CONSTRUCTION PLANS

127 SOUTH - 255 SOUTH MAIN STREET  
LAYTON, UTAH

LOCATED IN THE NORTHWEST CORNER OF SECTION 28,  
TOWNSHIP 4 NORTH, RANGE 1 WEST, 41ST.

INTERNALS



**DRAWING INDEX**

NO.	DESCRIPTION
100	GENERAL NOTES
101	CONSTRUCTION PLAN
102	CONSTRUCTION PLAN
103	CONSTRUCTION PLAN
104	CONSTRUCTION PLAN
105	CONSTRUCTION PLAN
106	CONSTRUCTION PLAN
107	CONSTRUCTION PLAN
108	CONSTRUCTION PLAN
109	CONSTRUCTION PLAN
110	CONSTRUCTION PLAN
111	CONSTRUCTION PLAN
112	CONSTRUCTION PLAN
113	CONSTRUCTION PLAN
114	CONSTRUCTION PLAN
115	CONSTRUCTION PLAN
116	CONSTRUCTION PLAN
117	CONSTRUCTION PLAN
118	CONSTRUCTION PLAN
119	CONSTRUCTION PLAN
120	CONSTRUCTION PLAN

ALL WORK AND MATERIALS LISTED MUST CONFORM TO LAYTON CITY STANDARDS AND SPECIFICATIONS

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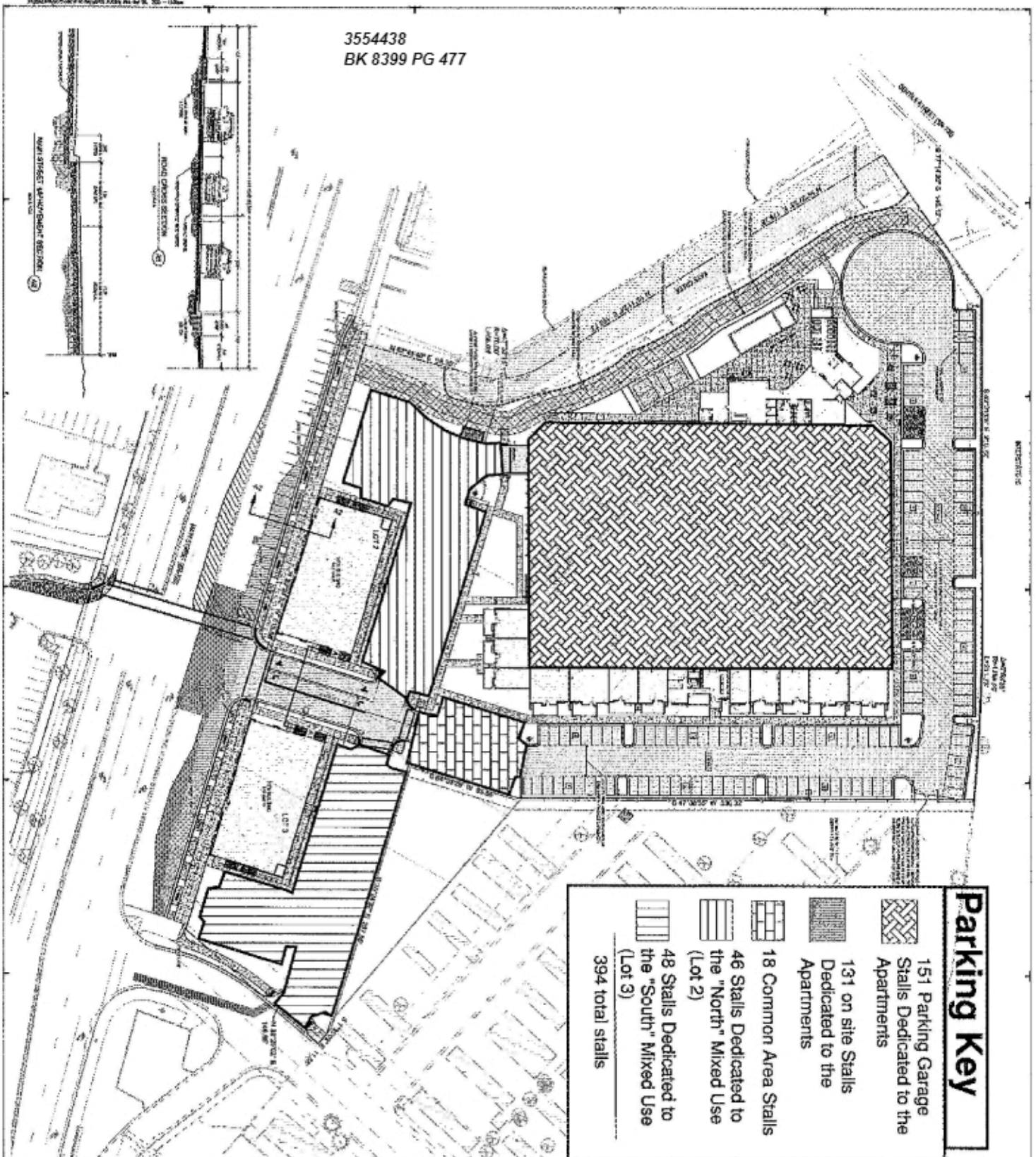
ALL WORK AND MATERIALS MUST CONFORM TO LAYTON CITY STANDARDS AND SPECIFICATIONS

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
DEVELOPER'S NAME  
LAWRENCE J. GARDNER  
LAWRENCE J. GARDNER & ASSOCIATES  
2000 SOUTH MAIN STREET  
SALT LAKE CITY, UT 84143

**MCNEIL ENGINEERING**  
Professional Engineer  
Civil Engineering & Construction  
1000 SOUTH MAIN STREET  
SALT LAKE CITY, UT 84143  
PHONE: 325-1111  
FAX: 325-1112  
WWW.MCNEIL-ENGINEERING.COM

**EXHIBIT E**  
**PARKING AREAS**



# Parking Key

-  151 Parking Garage Stalls Dedicated to the Apartments
-  131 on site Stalls Dedicated to the Apartments
-  18 Common Area Stalls
-  46 Stalls Dedicated to the "North" Mixed Use (Lot 2)
-  48 Stalls Dedicated to the "South" Mixed Use (Lot 3)
- 394 total stalls**



SEE DATE, TIME, E. OF SHEET

DATE	TIME	E. OF SHEET

LAND USE DESIGN

LAND USE	DESIGN

LAND USE DESIGN

LAND USE	DESIGN

LAND USE DESIGN

LAND USE	DESIGN

REVISIONS

NO.	DATE	DESCRIPTION

**NOTES**

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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**Call**  
McNeil Engineering  
127 South - 255 South Main Street  
Layton, Utah 84041  
801.468.1111  
www.mcneil-engineering.com

**REVISIONS**

NO.	DATE	DESCRIPTION

**OVERALL SITE PLAN**  
DATE: 08/14/2018  
SCALE: AS SHOWN

**LAYTON MIXED-USE**

127 SOUTH - 255 SOUTH MAIN STREET  
LAYTON, UTAH  
LOCATED IN THE NE 1/4 OF SECTION 25, T4N, R1W, S10M

**McNEIL ENGINEERING**  
Professional Engineering • Consulting & Landscape Architecture  
Structural Engineering • Land Surveying & GIS