

WHEN RECORDED RETURN TO:

Andrew Jin-Chan Cherng and
Peggy Tsiang Cherng
C/o R. Michael Wilkinson P.C.
1683 Walnut Grove Avenue, Suite 201
Rosemead, CA 91770

00490171 Bk00944 Pg00160-00167

PATSY CUTLER - IRON COUNTY RECORDER
2004 SEP 15 15:58 PM FEE \$32.00 BY PTC
REQUEST: 50 UTAH TITLE CO/CEDAR CITY

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant is made this 10 day of September, 2004, by Providence Quantum Partners L.C., limited liability company, herein the "Declarant".

2-30979

WHEREAS, Declarant is the owner of the real property located at the northwest corner of Cross Hallow Road and Royal Hunt Drive in Cedar City, Utah, as more fully described on attached Exhibit A ("Benefited Parcel"), and

WHEREAS, Declarant has sold or, contemporaneously with the execution of this Declaration, will sell the Benefited Parcel to Andrew Jin-Chan Cherng and Peggy Tsiang Cherng, Co-Trustees, Cherng Family Trust dated October 30, 1987 ("CFT"), for development, construction, operation and use, in part, by Panda Express, Inc., a California Corporation controlled by CFT and/or its successors and assigns as a restaurant serving "Asian Food" as said term is defined below; and

WHEREAS, Declarant is also the owner of the real property adjacent to the Benefited Parcel as more fully described as attached Exhibit B ("Burdened Property") and desires to restrict the sale of Asian food on the Burdened Property for the benefit of Benefited Parcel; and

WHEREAS, Declarant desires to provide for the establishment of a site use restriction on the Burdened Property, so that Burdened Property cannot be used for operation or use of a restaurant whose monthly sales of Asian Food (as defined below) represent more than ten percent (10%) by dollar volume of its food sales.

NOW, THEREFORE, the Declarant declares that:

A. The Burdened Property, is and shall be held, transferred, sold, conveyed and occupied subject to the restrictive covenant hereinafter set forth.

Section 1. Asian Food. The term "Asian Food" is defined to mean Chinese, Korean, Thai, Cajun, Vietnamese, Hawaiian, Mongolian, and Japanese food.

Section 2. Restriction. No part of the Burdened Property shall be used by a restaurant whose sale of Asian Food represents more than ten percent (10%) of its food sales, whether as a sit down restaurant, quick-service restaurant, drive thru restaurant, pick up restaurant or store, or other business, or any combination of the foregoing, of

Asian Food.

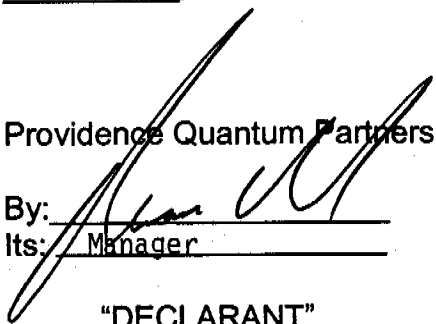
B. Covenant Running with the Land. This Declaration is a covenant running with the land. All of the provisions of the Declaration will run with and bind the Benefited and Burdened Properties and will inure to the benefit of the respective Properties.

C. Term. This Declaration and the restriction on the Burdened Property and shall be binding upon said Property and its owners and assigns and shall run with the land so long as CFT, Panda Express, Inc., or its successors and assigns continue to occupy and use the Benefited Property for a restaurant which sells Asian Food.

D. Enforcement. This Declaration may be enforced through a proceeding for legal or equitable relief, including without limitation, injunctive relief, in which case the prevailing party shall be entitled to an award of its reasonable legal fees and costs, as against the non-prevailing party.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused its name to be signed and its seal to be hereunto affixed, effective this 10 day of September _____, 2004.

Providence Quantum Partners L.C.

By: 
Its: Manager

"DECLARANT"

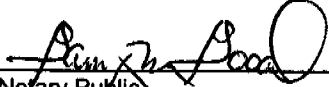
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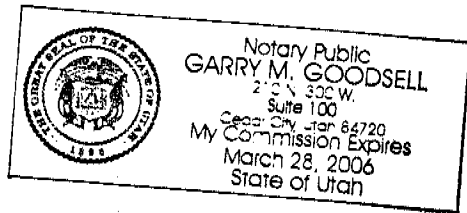
ACKNOWLEDGMENT

STATE OF UTAH)
) ss.
COUNTY OF IRON)

On Sept 10, 200~~3~~⁴, before me, Garry M. Goodsell Notary Public, personally appeared Thomas A. Pugh, personally known to me or (proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public
My commission expires: 3/28/2006



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EXHIBIT "A"
LEGAL DESCRIPTION OF BENEFITED PROPERTY

BEGINNING AT A POINT LOCATED SOUTH 01°09'20" EAST 21.12 FEET AND NORTH 90°00'00" EAST 573.47 FEET FROM THE WEST QUARTER CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE AND MERIDIAN; RUNNING THENCE NORTH 00°48'51" WEST 133.06 FEET; THENCE SOUTH 70°47'16" EAST 93.51 FEET; THENCE NORTH 73°44'03" EAST 127.26 FEET TO A POINT LOCATED ON THE WEST RIGHT OF WAY OF ROYAL HUNTE DRIVE, SAID POINT ALSO BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 455.00 FEET AND A CENTRAL ANGLE OF 24°35'44" RADIUS POINT BEARS SOUTH 73°44'03" WEST; THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT OF WAY 195.32 FEET TO THE P.T.; THENCE SOUTH 08°19'46" WEST 150.82 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHWESTERLY ALONG SAID CURVE 62.83 FEET TO THE P.T. SAID POINT ~~ALSO~~ ^{ALSO} BEING ON THE NORTH RIGHT OF WAY OF CROSS HOLLOW ROAD; THENCE NORTH 81°40'14" WEST ALONG SAID RIGHT OF WAY 99.00 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 1150.00 FEET AND A CENTRAL ANGLE OF 5°06'09"; THENCE NORTHWESTERLY ALONG SAID CURVE 102.41 FEET; THENCE DEPARTING SAID RIGHT OF WAY AND RUNNING NORTH 12°03'08" EAST 209.39 FEET TO THE POINT OF BEGINNING.

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EXHIBIT "B"
LEGAL DESCRIPTION OF BURDENED PROPERTIES

PROVIDENCE QUANTUM L.C. SOUTH PARCEL:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE S89°51'05"W, 150.02 FEET; THENCE N01°09'20"W, 403.91 FEET; THENCE S90°00'00"W, 362.90 FEET; THENCE N02°37'28"W, 1375.45 FEET; THENCE S65°56'25"E, 168.00 FEET; THENCE N22°19'39"E, 40.95 FEET; THENCE N24°06'44"E, 74.00 FEET; THENCE S68°20'15"E, 727.15 FEET; THENCE N21°39'45"E, 330.64 FEET; THENCE S65°53'16"E, 343.67 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 825.00 FEET, AND A CENTRAL ANGLE OF 19°57'43" RADIUS POINT BEARS N87°20'58"W. THENCE SOUTHERLY ALONG SAID CURVE 287.43 FEET; THENCE S22°36'45"W, 473.15 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 1155.00 FEET AND A CENTRAL ANGLE OF 06°35'24"; THENCE SOUTHWESTERLY ALONG SAID CURVE 132.84 FEET; THENCE S29°12'09"W, 337.59 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 1084.93 FEET AND A CENTRAL ANGLE OF 31°59'12"; THENCE SOUTHERLY ALONG SAID CURVE 605.69 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 634.07 FEET AND A CENTRAL ANGLE OF 00°04'43"; THENCE SOUTHERLY ALONG SAID CURVE 0.87 FEET; THENCE N89°59'59"W, 122.92 FEET TO THE POINT OF BEGINNING, CONTAINING 34.099 ACRES.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:
BEGINNING AT A POINT LOCATED NORTH 01°09'20" WEST ALONG THE SECTION LINE 1576.20 FEET AND NORTH 90°00'00" EAST 543.51 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE AND MERIDIAN; RUNNING THENCE NORTH 68°20'15" WEST 194.15 FEET; THENCE NORTH 21°39'45" EAST 221.34 FEET; THENCE SOUTH 65°53'16" EAST 194.33 FEET; THENCE SOUTH 21°39'45" WEST 213.03 FEET TO THE POINT OF BEGINNING.

ALSO, EXCEPTING, BEGINNING AT A POINT LOCATED NORTH 01°09'20" WEST ALONG THE SECTION LINE 1576.20 FEET AND NORTH 90°00'00" EAST 543.51 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE AND MERIDIAN RUNNING THENCE SOUTH 21°39'45" WEST 217.67 FEET; THENCE NORTH 68°20'15" WEST 132.25 FEET; THENCE NORTH 25°47'08" WEST 110.49 FEET; THENCE NORTH 21°39'45" EAST 33.65 FEET; THENCE SOUTH 68°20'15" EAST 19.50 FEET; THENCE NORTH 21°39'45" EAST 109.30 FEET; THENCE SOUTH 68°20'15" EAST 194.15 FEET TO THE POINT OF BEGINNING.

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PROVIDENCE QUANTUM L.C. EAST PARCEL:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE N01°09'20"W, 2239.41 FEET; THENCE N90°00'00"E, 1213.51 FEET TO THE POINT OF BEGINNING; THENCE S12°08'19"W, 1121.56 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 246.48 FEET, AND A CENTRAL ANGLE OF 29°15'22", RADIUS POINT BEARS N49°32'25"W. THENCE SOUTHWESTERLY ALONG SAID CURVE 125.86 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 1084.93 FEET AND A CENTRAL ANGLE OF 17°25'33"; THENCE SOUTHWESTERLY ALONG SAID CURVE 329.97 FEET TO A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1245.00 FEET, AND A CENTRAL ANGLE OF 02°32'36". RADIUS POINT BEARS N64°50'39"W, THENCE NORTHEASTERLY ALONG SAID CURVE 55.26 FEET; THENCE N22°36'45"E, 473.15 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 915.00 FEET AND A CENTRAL ANGLE OF 28°30'49"; THENCE NORTHERLY ALONG SAID CURVE 455.36 FEET; THENCE N05°54'04"W, 156.76 FEET; THENCE N84°05'56"E, 118.30 FEET; THENCE N08°19'46"E, 68.45 FEET; THENCE N30°24'32"E, 88.38 FEET; THENCE N08°19'46"E, 54.22 FEET; THENCE N01°24'13"W, 50.10 FEET; THENCE N40°18'04"E, 16.91 FEET; THENCE N53°19'46"E, 11.57 FEET; THENCE S81°40'14"E, 9.41 FEET TO A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1150.00 FEET, AND A CENTRAL ANGLE OF 05°29'51". RADIUS POINT BEARS S08°19'45"W. THENCE EASTERLY ALONG SAID CURVE 110.34 FEET; THENCE S70°49'42"E, 58.25 FEET TO THE POINT OF BEGINNING CONTAINING 7.022 ACRES.

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PROVIDENCE QUANTUM L.C. NORTH PARCEL:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE N01°09'20"W, 487.07 FEET; THENCE N90°00'00"E, 970.84 FEET TO THE POINT OF BEGINNING; THENCE N38°55'45"E, 204.54 FEET; THENCE S51°04'15"E, 225.70 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 05°32'19"; THENCE SOUTHEASTERLY ALONG SAID CURVE 9.67 FEET; THENCE S45°31'56"E, 0.66 FEET; THENCE N38°55'45"E, 314.53 FEET; THENCE N51°04'15"W, 232.28 FEET; THENCE N44°07'12"E, 235.56 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 87°12'21"; THENCE EASTERLY ALONG SAID CURVE 22.83 FEET; THENCE S48°40'27"E, 275.15 FEET; THENCE S38°55'45"W, 204.55 FEET; THENCE S51°04'15"E, 178.30 FEET; THENCE S22°41'29"W, 418.05 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET AND A CENTRAL ANGLE OF 67°02'54"; THENCE SOUTHWESTERLY ALONG SAID CURVE 292.55 FEET; THENCE S89°44'23"W, 85.23 FEET; THENCE N00°15'37"W, 107.61 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 07°31'33"; THENCE NORTHERLY ALONG SAID CURVE 13.14 FEET; THENCE N86°37'06"W, 155.95 FEET; THENCE N22°34'31"W, 296.69 FEET TO A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 417.55 FEET, AND A CENTRAL ANGLE OF 03°11'14". RADIUS POINT BEARS N47°53'01"W. THENCE NORTHEASTERLY ALONG SAID CURVE 23.23 FEET TO THE POINT OF BEGINNING CONTAINING 8.405 ACRES.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:
BEGINNING NORTH 01°09'20" WEST, 692.25 FEET ALONG THE SECTION LINE AND NORTH 90°00'00" EAST, 1546.23 FEET FROM THE WEST QUARTER CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 51°04'15" WEST, 311.78 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF BENTLEY BOULEVARD; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 44°07'12" EAST, 235.56 FEET TO A POINT OF CURVATURE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 87°12'21"; THENCE ALONG THE ARC OF SAID CURVE 22.83 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF REGENCY ROAD; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 48°40'27" EAST 275.15; THENCE SOUTH 38°55'45" WEST, 236.72 FEET TO THE POINT OF BEGINNING.

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PROVIDENCE QUANTUM L.C. WEST PARCEL:

BEGINNING AT THE WEST QUARTER CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE N01°09'20"W, 131.59 FEET; THENCE N38°17'15"E, 132.30 FEET; THENCE N02°18'07"E, 178.13 FEET; THENCE N49°39'13"E, 268.90 FEET; THENCE N22°42'23"W, 224.97 FEET; THENCE N52°04'50"E, 285.45 FEET; THENCE S22°34'28"E, 222.45 FEET; THENCE S49°39'13"W, 288.50 FEET; THENCE S22°42'23"E, 416.20 FEET; THENCE N46°49'39"E, 292.47 FEET; THENCE S22°34'28"E, 171.22 FEET; THENCE S73°44'03"W, 275.35 FEET; THENCE S22°42'23"E, 17.71 FEET; THENCE S70°47'16"E, 193.66 FEET; THENCE N73°44'03"E, 127.26 FEET TO A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 455.00 FEET, AND A CENTRAL ANGLE OF 24°35'43" RADIUS POINT BEARS S73°44'03"W, THENCE SOUTHERLY ALONG SAID CURVE 195.32 FEET; THENCE S08°19'46"W, 150.82 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHWESTERLY ALONG SAID CURVE 62.83 FEET; THENCE N81°40'14"W, 99.00 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 1150.00 FEET AND A CENTRAL ANGLE OF 05°06'09"; THENCE WESTERLY ALONG SAID CURVE 102.41 FEET; THENCE CONTINUE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°33'53", A DISTANCE OF 252.19 FEET; THENCE N64°00'12"W, 13.00 FEET; THENCE N25°59'48"E, 171.50 FEET; THENCE N64°00'12"W, 212.07 FEET; THENCE S25°59'48"W, 171.50 FEET; THENCE N64°00'12"W, 101.22 FEET TO THE POINT OF BEGINNING, CONTAINING 9.332 ACRES.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:
BEGINNING AT A POINT LOCATED SOUTH 01°09'20" EAST 21.12 FEET AND NORTH 90°00'00" EAST 573.47 FEET FROM THE WEST QUARTER CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE AND MERIDIAN; RUNNING THENCE NORTH 00°48'51" WEST 133.06 FEET; THENCE SOUTH 70°47'16" EAST 93.51 FEET; THENCE NORTH 73°44'03" EAST 127.26 FEET TO A POINT LOCATED ON THE WEST RIGHT OF WAY OF ROYAL HUNTE DRIVE, SAID POINT ALSO BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 455.00 FEET AND A CENTRAL ANGLE OF 24°35'44" RADIUS POINT BEARS SOUTH 73°44'03" WEST; THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT OF WAY 195.32 FEET TO THE P.T.; THENCE SOUTH 08°19'46" WEST 150.82 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHWESTERLY ALONG SAID CURVE 62.83 FEET TO THE P.T. SAID POINT ALSO BEING ON THE NORTH RIGHT OF WAY OF CROSS HOLLOW ROAD; THENCE NORTH 81°40'14" WEST ALONG SAID RIGHT OF WAY 99.00 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 1150.00 FEET AND A CENTRAL ANGLE OF 5°06'09"; THENCE NORTHWESTERLY ALONG SAID CURVE 102.41 FEET; THENCE DEPARTING SAID RIGHT OF WAY AND RUNNING NORTH 12°03'08" EAST 209.39 FEET TO THE POINT OF BEGINNING.

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