

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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Jeffery Smith
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Daniel Schmidt
c/o WPI Enterprises, Inc.
5455 W. 1100 N., Suite 202
Highland, UT 84003

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND GRANT OF EASEMENTS**

SARATOGA SPRINGS, UTAH

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND GRANT OF EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT OF EASEMENTS (“**Agreement**”) is made as of the 27th day of June, 2019, by Westlake Partners, LLC, a Utah limited liability company (“**Westlake Partners**”), and Utah Valley Turf Farm Limited Partnership, an Arizona limited partnership (“**UVTF**,” and together with Westlake, “**Declarant**”).

RECITALS

- A. Declarant is the owner of approximately 7.02 acres of real property situated in Utah County, State of Utah, more particularly described on Exhibit A attached hereto, and depicted on the site plan (the “**Site Plan**”) as attached hereto as Exhibit A-1 (the “**Parcels**”).
- B. The Parcels are part of a larger retail development (the “**Retail Center**”) with a legal description set forth on Exhibit B and as depicted on Exhibit B-1. The portion of the Retail Center that does not include the Parcels is owned by UVTF.
- C. In light of the impact the development, operation, management, and maintenance of the Parcels may have on the Retail Center and adjacent real property owned or controlled by Declarant and/or entities controlling, controlled by or under common control with Declarant, Declarant shall be a third party beneficiary under this Agreement, and the rights granted and/or reserved by Declarant shall remain vested in Declarant although Declarant may no longer be an Owner of a Parcel.
- D. Declarant intends to sell or develop the Parcels as pads that will be developed and used for retail or service uses and desires to impose certain easements upon the Parcels, and to establish certain covenants, conditions and restrictions with respect to the Parcels, for the mutual and reciprocal benefit and complement of the Parcels and the present and future owners thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the foregoing, and the terms and conditions set forth herein, and other good and valuable consideration, Declarant does hereby declare, adopt, establish and impose the following easements, covenants, conditions, and restrictions which shall be applicable to the Parcels, and it is hereby declared that the Parcels shall be held, transferred, improved, sold, and conveyed subject to the following covenants, conditions, restrictions and easements, which are for the purpose of protecting the value and desirability of the Parcels, and which shall run with the land and shall be binding upon, and inure to the benefit of Declarant, and its heirs, successors, and assigns as owners of the Parcels. By accepting the transfer or conveyance of title or leasehold interest to any Parcels, such transferee accepts and agrees to the terms and conditions of this Agreement and shall have a privity relationship with Declarant under this Agreement.

1. DEFINITIONS.

1.1 Administrative Fee. “**Administrative Fee**” means the Administrative Fee as defined in Section 13.4.

1.2 Agreement. “**Agreement**” means this Declaration of Covenants, Conditions, Restrictions and Grant of Easements.

1.3 Annual Budget. “**Annual Budget**” means the Annual Budget defined in Section 13.4.

1.4 Building Improvements. “**Building Improvements**” shall mean: (a) grubbing, grading, and compaction of the building Pad whereby it is deemed an improved Pad ready for footings/foundations and horizontal improvements, and (b) buildings and structures and associated improvements, such as loading docks, stairs, ramps, storage cages, compactors, vestibules, canopies, overhangs, building landscaping, sidewalks, exterior building lighting, and exterior building Signs.

1.5 CAM. “**CAM**” means the operation, management, maintenance, repair, and replacement of the Common Area as set forth in Section 13.3 of this Agreement.

1.6 CAM Costs. “**CAM Costs**” means the costs associated with CAM, including any reserves.

1.7 CAM Statement. “**CAM Statement**” means the CAM Statement as defined in Section 13.6.

1.8 Common Area. “**Common Area**” means the following: (a) the drive aisles and parking areas located on the Parcels, excluding any drive-thru lanes for facilities, (b) storm water drainage systems associated with the drive aisles and parking areas within the Parcels, including catch basins, culverts, pipes, and detentions/retention basins, that service the Parcels as a whole and not individual Parcels, (c) park and landscape strips, planter strips, and landscaping located within the Parcels, (d) the paved portion of the Road, and (e) any other portions of the Parcels (as it may be expanded from time to time in accordance with the provisions of this Agreement) upon which buildings are not constructed or otherwise cannot be constructed and which are not expressly excluded from the Common Area. Notwithstanding the forgoing, drive-thru lanes and any area associated with drive-thru lanes and/or automated teller machines shall not be part of the Common Area.

1.9 Common Area Improvements. “**Common Area Improvements**” mean the improvements to the Parcels located within the Common Area, including the following: (a) Common Utilities servicing the Common Area, excluding any utilities that exclusively service a building located on any Parcel, (b) grubbing, rough grading, and final grading of the Common Area, (c) curbs, curb cuts, gutters, asphalt and concrete paving associated with the drive aisles and parking areas within the Common Area, (d) storm water drainage systems associated with the drive aisles and parking areas within the Parcels, including catch basins, culverts, pipes, and detentions/retention basins on the Common Area, that service the Parcels as a whole and not

individual Parcels, (e) retaining walls that service or support the Common Area, (f) landscaping within the park strips, landscape strips, planter strips and located within the Common Area, along with associated irrigation systems, valves, pipes, and sprinklers, expressly excluding any landscaping located behind the curb and adjacent to buildings located on the Parcels, (f) lighting facilities (excluding building lighting) servicing the Common Area, including associated conduit and electrical wiring and transformers, (g) striping and directional signage for the drive aisles and parking areas within the Parcels, including parking stall striping, crosswalks, ADA striping, directional striping, and any necessary or required signage, (h) parking bumpers, (i) sidewalks along the perimeter of Parcels, expressly excluding any sidewalks located behind the curb and adjacent to buildings located on the Parcels, and (j) any other improvements within the Common Area, such as site improvements, drive aisles, parking areas, sidewalks and walkways, and landscaping upon the Parcels. Notwithstanding the forgoing, drive-thru lanes and any landscaping and improvements associated with drive-thru lanes shall not be part of the Common Area Improvements.

1.10 Common Utilities. “Common Utilities” mean any Common Utilities, including, without limitation, utilities lines, storm water pipes and structures, sanitary sewer pipes, culinary water pipes, irrigation water (if any), natural gas pipes, electrical lines, telephone and fiber optic lines, and other utility lines that service the Common Area within the Parcels, excluding the Common Utilities and any secondary or lateral pipes or lines that service a single Parcel or Pad, excluding, however, all improvements located “curb-in”, including the curbs, sidewalks and walkways, landscaping, and irrigation systems serving such landscaping.

1.11 Curing Owner. “Curing Owner” means the Curing Owner as defined in Section 14.1.

1.12 Declarant. “Declarant” means the Declarant defined in the Preamble to this Agreement.

1.13 Defaulting Owner. “Defaulting Owner” means the Defaulting Owner as defined in Section 14.1.

1.14 Environmental Laws. “Environmental Laws” means any and all existing and future Laws, orders, permits, licenses, approvals, authorizations and other requirements that control, classify, regulate, list or define Hazardous Materials.

1.15 Governmental Approvals. “Governmental Approvals” means all ordinances, consents, permits, and approvals that are required by applicable Governmental Authorities which have been received and are valid, irrevocable, unqualified, and unconditioned (except for such qualifications and/or conditions that are acceptable to Declarant in its reasonable discretion), and are no longer subject to appeal or litigation, and that are necessary for the development, construction, use, and operation of the Common Area Improvements, including, without limitation, all planned development and conditional use permits (if any), site plan approvals, parcel map conditions, permit conditions, zoning variances, building permits and other notices, licenses, permits and other certificates and authority required in connection with the construction or use of the Common Area Improvements.

1.16 Governmental Authorities. “**Governmental Authorities**” shall mean all federal, state and local governments, and subdivisions thereof, together with all other governmental or quasi-governmental authorities having jurisdiction over the Parcels, as the case may be.

1.17 Hazardous Materials. “**Hazardous Materials**” means any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous or toxic waste, substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, *et seq.*, and any state Environmental Laws, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

1.18 Improved Parcels. “**Improved Parcels**” shall mean Parcels that have commenced to be improved with buildings, structures, asphalt surfacing, and formal landscaping. Improved Parcels shall not include raw vacant Parcels until such time as construction of improvements on those Parcels commences.

1.19 Indemnifying Party. “**Indemnifying Party / Indemnifying Parties**” mean the Indemnifying Party / Indemnifying Parties defined in Section 6.1.

1.20 Interest Rate. “**Interest Rate**” shall mean the greater of (a) eighteen percent (18%), or (b) the Prime Rate plus 600 basis points; provided that the Interest Rate shall not exceed the maximum rate permitted by law. The Interest Rate may be fully floating and shall increase or decrease, as the case may be, as of the effective date of each increase or decrease in the Prime Rate.

1.21 Laws. “**Laws**” means any and all applicable existing and future laws, statutes, ordinances, regulations, codes, and orders of every governmental body having jurisdiction over the Retail Center.

1.22 Liened Owner. “**Liened Owner**” means the Liened Owner defined in Section 10.

1.23 Manager. “**Manager**” means the Owner or entity that is responsible for the maintenance and operation of the Common Area as provided in this Agreement. The initial Manager will be WPI Enterprises, Inc., a Utah corporation.

1.24 Media. “**Media**” means the Media as defined in Section 12.3.4.

1.25 Occupant. “**Occupant**” means any person, corporation, partnership, limited liability company, or any other entity, public or private, that is entitled to occupy from time to time any portion of the Parcels under an ownership right or any lease, sublease, license, concession, or other arrangement or agreement.

1.26 Owner. “**Owner**” means any person or entity having fee record title interest to any Parcel and their respective assigns, grantees, and successors in interest.

1.27 Pad. “**Pad**” means a building pad within the Parcels.

1.28 Parcels. “**Parcels**” mean the legally subdivided parcels within the property identified on Exhibit A, whether currently subdivided or subdivided in the future, that are subject to this Agreement and depicted on Exhibit A-1.

1.29 Performing Owner. “**Performing Owner**” means the Performing Owner defined in Section 10.

1.30 Permitted Projections. “**Permitted Projections**” mean the Permitted Projections defined in Section 3.4.

1.31 Prime Rate. “**Prime Rate**” means the prime lending rate as published in the Wall Street Journal, or a replacement publication as mutually agreed upon by the Parties.

1.32 Pro Rata Share of CAM Costs. “**Pro Rata Share of CAM Costs**” means the Pro Rata Share of CAM Costs as defined in Section 13.6.

1.33 Protesting Owner. “**Protesting Owner**” means the Protesting Owner as defined in Section 13.12.

1.34 Reconciliation Share. “**Reconciliation Share**” means the Reconciliation Share as defined in Section 13.6.

1.35 Records. “**Records**” means the Records as defined in Section 13.6.

1.36 Requesting Owner. “**Requesting Owner**” means the Requesting Owner defined in Section 19.9.

1.37 Reserve Fund. “**Reserve Fund**” means the Reserve Fund as defined in Section 13.4.

1.38 Retail Center. “**Retail Center**” means the Retail Center defined in Recital B.

1.39 Road. “**Road**” means that certain private road running east-west along the southern border of the Parcels, as depicted on Exhibit C attached hereto.

1.40 Satellite Equipment. “**Satellite Equipment**” means satellite communications and receiving dish and related sled, and any other related materials, equipment or components thereof.

1.41 Signs. “**Signs**” means any monument or exterior building sign placed or constructed within the Parcels or upon any building within the Parcels and any signs visible through any window or otherwise from the exterior of any building.

1.42 Site Plan. “**Site Plan**” means the Site Plan defined in Recital A.

1.43 Utility Systems. “**Utility Systems**” mean the Utility Systems defined in Section 3.3.

2. IMPROVEMENT OF PARCELS.

2.1 Construction of Building Improvements and Subsequent Common Improvements.

2.1.1 Building Improvements and Common Improvements. The buildings to be constructed in the Parcels may be placed anywhere within the designated building limit lines as shown on the “Building Plan” attached hereto and incorporated herein as Exhibit D.

2.1.2 Commencement of Construction. At least thirty (30) days’ prior to commencement of construction of any Building Improvements and Common Improvements, the Owner of the applicable Parcel shall deliver to Declarant and to the other Owners written notice of such commencement and a certificate of insurance evidencing the insurance coverage required by Section 6.3 of this Agreement. Construction of the Building Improvements and Common Improvements shall be performed in conformance with all applicable Laws and shall not adversely interfere with the use, occupancy, or enjoyment of any part of any Parcel.

2.1.3 Access. During construction of the Building Improvements and Common Improvements, the construction activities shall not interfere with access over and across access points and common drive aisles located within the Parcels. Upon completion of the Building Improvements and Common Improvements, the Owner of the applicable Parcel, at its sole cost and expense, shall restore any affected access ways and common drive aisles to a condition equal to or better than the condition thereof prior to the commencement of the Building Improvements and Common Improvements.

2.1.4 Staging Areas. During construction of the Building Improvements or any Common Improvements, the Owner of the applicable Parcel shall coordinate in locating its staging area so as not to adversely interfere with the timely completion of any other Common Area Improvements or Building Improvement or the operation of a business on any other Parcel. All construction materials and the parking of construction and workers’ vehicles in connection with the Building Improvements and Subsequent Common Improvements shall be stored and located on the Parcel where the improvements are being made and outside of any common drive aisles or access points.

2.2 Coordination of Construction. In the event any Common Improvements and any Building Improvements on different Parcels are being constructed at the same time, the Owners shall reasonably cooperate to coordinate the work of their respective engineers, general contractors, consultants, and subcontractors such that the work is completed in a timely manner and at no unreasonable increase in cost to the other. The Owners agree to promptly remove or cause to be removed from their respective Parcels, all persons hired or engaged by them who are actively creating labor disharmony and to otherwise cooperate in providing separate accommodations and accesses to the extent necessary and appropriate in connection with the construction of the various improvements upon the Parcels. Notwithstanding the foregoing, in no event shall Declarant be expected or obligated to engage in any conduct that is in conflict with or violates any federal, state, or local law including, without limitation, the National Labor Relations Act or the regulations thereto.

2.3 Construction Conditions. All building construction will be diligently prosecuted to completion, will be performed in a workmanlike manner and in accordance with the requirements of all Governmental Authorities having jurisdiction over such work and will be performed in a manner that does not unreasonably interfere with the operations of any business within the Parcels. If an Owner or an Occupant commences construction or exterior remodeling of a building within the Parcels, but such construction or exterior remodeling ceases prior to the completion of building for a period exceeding one hundred twenty (120) days, and Manager in its reasonable discretion determines that such unfinished building or exterior remodeling creates an unsafe or unsightly condition detrimental to the Parcels, upon thirty (30) days' prior written notice to the Owner of the Parcel upon which such construction has ceased, Manager, in the case of uncompleted construction, may construct a barricade around such building and complete the work. Upon completion of any such work by Manager, the Owner upon whose Parcel the building is located, will reimburse Manager upon demand for all amounts expended in connection with such work. In the event such Owner fails to so reimburse Manager, Manager will have the lien and other rights set forth in Section 14.

2.4 Construction Standards. All buildings constructed in the Parcels shall be constructed to comply with all governmental requirements (including fire suppression/sprinkler and setback requirements). The Common Area Improvements shall be constructed in a manner consistent with first class shopping centers along the Wasatch front and in substantial compliance with the local engineering and building standards and requirements, unless otherwise agreed to by Declarant and the applicable Owner.

2.5 Approval of Future Improvements. No Common Area Improvements or Building Improvements may be constructed or modifications thereto made within the Parcels without the prior review and approval of Manager, which approval shall not be unreasonably withheld, conditioned or delayed. If any Owner desires to construct or place any Common Area Improvements or Building Improvements within the Parcels, such Owner will provide preliminary plans and exterior elevations for such improvements and a site plan showing the location of such improvements to Declarant for review and approval. The Owners of any Parcels shall not make any modifications of the Common Area without the prior review and approval of Manager. All buildings in the Parcels shall be designed so that the exterior elevation of each

building will be architecturally and aesthetically compatible with the others, including the height, color, materials, design and architectural theme (including Signs located thereon) as reasonably determined by Manager. The maximum height of any building or structure (including any parapet wall and roof line) within the Parcels shall not exceed thirty-two (32) feet in height measured from the average grade elevation of the building to the highest portion of the building. In addition, Manager will approve the location, footprint, and height of any buildings and other improvements constructed within the Parcels, which approval will be subject to Manager's sole but reasonable discretion.

2.6 Construction. On or before the commencement of business operations on any Parcel, each applicable Owner, at its sole cost and expense, shall design, install, place, and construct on the Parcel owned by such Owner the portion of the Common Area Improvements to be located on such Parcel. If Declarant performs an Owner's obligations related to the design, installation, placement, and/or construction any Common Area Improvements, the Owner shall reimburse Declarant for the cost associated therewith within thirty (30) days after a statement of the costs associated therewith from Declarant.

3. EASEMENTS.

3.1 Construction Easement. The Owners hereby each grant to the other, and their respective consultants, contractors, agents, and employees the right and license to enter upon the others' Parcels for the purpose of constructing and inspecting the Common Area Improvements in accordance with the provisions of this Agreement, which right and license shall terminate upon completion of the Common Area Improvements; provided, however, that each Owner shall keep the other Owners' Parcel(s) free and clear of any mechanics' or materialmen's liens related to such Owner's exercise of its rights under the foregoing license, and at its sole cost and expense, restore the other Owners' parcel(s) to its condition prior to such Owner's entry subject to the terms and conditions of this Agreement.

3.2 Ingress, Egress and Parking. Subject to the terms of Section 12, each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of each such grantee Owner, and for the use of the Owners and their respective tenants, and the employees, agents, customers and invitees of such Owner and its tenants, and for the benefit of the Parcels owned by such grantee Owner, and as a burden on the grantor Owner's Parcel, a non-exclusive easement appurtenant to each grantee Owner's Parcel for the purpose of ingress and egress by vehicular and pedestrian traffic and for vehicular parking upon, over, across and through the drive aisles and parking areas located on the Common Area on such grantor Owner's Parcel as the same may be modified from time to time; provided, however, each Owner shall have the right to designate parking stalls for the exclusive use of the Occupants of its Parcel for "take-out," "pick-up" and/or short-term parking located adjacent to the buildings on such Parcel. Except as to Declarant as herein provided, the foregoing will not create any rights in any parties other than the Owners. The parking rights and cross-easements for parking will be subject to Declarant's and/or Manager's right to temporarily close portions of the Common Area to prevent public dedication, facilitate maintenance and repairs and/or permit outdoor sales of particular Occupants.

3.3 Utility Systems. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of each such grantee Owner and its Parcel, without the necessity for further documentation, non-exclusive easements appurtenant to the Parcel owned by the grantee Owner, under, through and across the Common Area of the Parcel owned by the grantor Owner, for the installation, maintenance, repair and replacement of water drainage systems or structures, water mains, storm drains, sewers, water sprinkler system lines, telecommunication, electrical conduits or systems, cable lines, gas mains and other public utility facilities (“**Utility Systems**”) necessary for the orderly development and operation of the Common Area and each building in the Parcels; provided, however, (a) the location of such Utility Systems shall be subject to the consent of the Owner of the applicable Parcel, which consent shall not be unreasonably conditioned, withheld, or delayed, (b) the rights granted pursuant to such easements will at all times be exercised in such manner as to minimize the interference with the normal operation of the Parcels, and (c) except in an emergency, the right of any grantee Owner to enter upon the Parcel of any grantor Owner for the exercise of any right pursuant to such easements will be conditioned upon obtaining the prior written consent of such grantor Owner, which consent will not unreasonably be withheld or delayed. The location of all Utility Systems shall be approved by Declarant. All such Utility Systems will be installed and maintained below the surface or ground level of such easements. In the event an Owner deems it necessary to cause the installation of a Utility System across the Common Area of any other Parcel subsequent to the initial paving and improving thereof, the Owner thereof agrees not to unreasonably withhold the granting of any necessary additional easements; provided, such Owner may withhold its consent if such installation would unreasonably interfere with the normal operation of any business in the Parcels, or with such Owner’s plans for the development of its Parcel; and provided further, the Owner making or causing such installation shall, at its sole cost and expense, completely restore in the same or better condition all Common Area improvements and surfaces disrupted as a result of such installation.

In the event it should be necessary to grant any of the foregoing easements and rights to local utility companies as a condition of their providing or continuing service, such rights shall be granted provided that the Owners required to execute such instruments and Declarant deem the terms and conditions of such a grant to be reasonably acceptable. In such event, the Owner requiring or causing the requirement of any such easement shall, promptly following the grant of such easement, and at its sole cost and expense, provide to the Owner granting such easement an ALTA survey (or the local equivalent thereof) of such Owner’s Parcel depicting such easement.

3.4 Building Encroachments. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of such grantee Owner and its Parcel, an easement for any portion of any building or structures on any Parcel (including, but not limited to, footings, piers, piles, grade beams, docks, trash compactors, stairs, landings, ramps, support columns, eaves, canopies, roof overhangs, utility meters, and subsurface support elements required for the construction or reconstruction of any building or structure (collectively, “**Permitted Projections**”) which may encroach onto or over an adjoining Parcel; provided, that (a) the easement for Permitted Projections and all other building encroachments granted herein shall not exceed two (2) feet, (b) the encroachment easement shall not extend to encroachments that are intentional or which materially and adversely affect the location, orientation, design, construction, or use of buildings or other improvements to be constructed on a Parcel upon which

the encroachment has taken place, unless first approved in writing by the Owner of the affected Parcel. The easement granted herein shall last so long as this Agreement is in effect. In the event this Agreement expires, this easement shall last so long as the Building of which such encroachment is a part is standing.

3.5 Emergency Exits. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee and for the benefit of each other Owner and its respective Parcel: (i) an easement for any portion of any stairs and landings (including any footings and foundations related thereto) constructed in connection with building emergency exits required by any governmental entity, which may encroach onto or over an adjoining Parcel; and (ii) an easement for emergency egress from such emergency building exits; provided, the easement for stairs and landings (and foundations and footings related thereto) granted herein shall not (a) exceed six (6) feet in width or depth or (b) materially and adversely affect the location, orientation, design, construction, or use of buildings or other improvements to be constructed on a Parcel upon which the encroachment has taken place, unless first approved in writing by the Owner of the affected Parcel.

3.6 Storm Water Drainage. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee and for the benefit of each other Owner and its respective Parcel a non-exclusive easement for the natural and/or incidental discharge and drainage of storm water; provided that each Parcel will be designed to capture and retain on such Parcel any storm water that may be naturally deposited on such Parcel. This easement is intended to accommodate the natural flow and incidental discharge of water across the hard surfacing within the Parcels. Pursuant to Section 3.5 the storm water system within the Parcels should be designed in an efficient and economical manner to accommodate the storm water drainage, detention and discharge from the Parcels, including possible interconnection of the systems on multiple Parcels, in accordance with applicable Laws.

3.7 Restoration. If any Owner damages the Common Area as a result of any construction activity or the exercise of its easement rights, such as the placement of utilities within the Common Area (excluding normal and anticipated use and wear and tear), such Owner, at its sole cost and expense, shall immediately repair such damage and restore the Common Area to the same or better condition that existed before such damage.

4. COMMON AREA USES. No persons other than Owners and Occupants of the Parcels and their customers, employees, agents, guests, licensees, servants, and contractors shall be permitted to park in the Common Area. In the event Manager determines that the Common Area is being used for purposes inconsistent with this Agreement, Manager shall have the right to construct a barricade around all or any portion of the perimeter of the Parcels to prevent such use; provided, such barricade shall not impede circulation within the Parcels or prohibit access to abutting streets during such times as the Parcels are open for business.

5. SIGNS.

5.1 Building Signs. Each Owner will have the right to maintain such Signs on the interior of buildings located on its Parcel as it desires. Any Signs, banners, flags, or advertising

objects, displays or lights visible from the exterior of any building within the Parcels shall require the prior approval of Declarant, which approval shall not be unreasonably withheld, conditioned or delayed. If permitted by Law, each Owner will have the right to erect, maintain and replace Signs on the exterior of the buildings or elsewhere on its Parcel (such as a monument sign) in strict conformity with the criteria set forth in the Sign Criteria attached hereto as Exhibit E. Each Owner, at its sole cost and expense, shall operate, maintain, repair, and replace the Signs located on its Parcel in a good, clean, and operational condition, and fully illuminated (if it is an illuminated sign). Other than Retail Center Signs discussed below, no Owner or Occupant may place any Signs in the Common Area, including any decorations, flags, or banners (except as otherwise provided in this Agreement) unless such Signs are pre-approved by Declarant in writing; provided, however, that notwithstanding anything in this Agreement to the contrary, if an Owner or Occupant of a Parcel is not provided space to use a sign face or a sign panel (or equivalent space if such is on an electronic sign) on a Retail Center Sign (as defined in Section 5.2 below) prior to such time as the Owner or Occupant desires to submit plans to the City of Saratoga Springs for approval of its proposed development of the Parcel, such Owner or Occupant shall be permitted to place a Sign in the Common Area located on its Parcel provided that such sign is approved by (i) the governmental authority having jurisdiction and (ii) Declarant, which approval of Declarant shall not be unreasonably withheld, conditioned or delayed.

5.2 Retail Center Signs. As part of the Common Area Improvements freestanding monument or pylon Signs (collectively, “**Retail Center Signs**”) may be constructed within the Common Area at locations agreed to by Declarant. Subject to approval by any applicable municipal authorities and Declarant, the Owners and/or Occupants of each Parcel may request that a sign face(s) and/or a sign panel(s) (or similar if such is part of an electronic sign) be placed upon the Retail Center Signs. Declarant, at its sole and subjective discretion, will determine the number, placement and identity of the sign faces and/or sign panel(s) to be placed upon the Retail Center Signs. Manager shall operate, maintain, repair, and replace Retail Center Signs. The cost of the design, manufacture, installation and construction of the Retail Center Signs and the maintenance, repair, and operation thereof will be incurred by Declarant or Manager but may be allocated by Declarant or the Manager to the Owners or the Occupants that have a sign face(s) and/or a sign panel(s) on the Retail Center Sign(s) in an equitable and reasonable manner (including allocating the costs to the Owners and/or Occupants on the same percentage). The Retail Center Signs may contain the name, logo and/or trademark of or associated with the Retail Center and may contain leasing type sign faces and/or panels. Except as expressly permitted in this Agreement, there will be no Signs in the Common Area of the Parcels without the prior written approval of Declarant, which may be granted or withheld in Declarant’s sole and subjective discretion. Each Owner with its own pylon or monument sign shall maintain such sign in good order, repair and operational conditions at its sole cost and expense.

5.3 Sign Utility Easement. Declarant hereby reserves an exclusive easement for the location of Retail Center Signs within the Parcels in the Common Area. Declarant hereby reserves for itself, and each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner allowed to erect or maintain Signs, sign towers or sign faces pursuant to this Section 5, as grantee, a non-exclusive easement under, through and across the Common Area for the purpose of installing and/or maintaining utility lines to the Retail Center Signs, if any, and all

other Signs, if any. The location of any Retail Center Signs and/or utility lines within a given Parcel shall be mutually agreed upon by Declarant and any affected Owner. Any utility lines servicing any Signs and the installation and maintenance thereof shall not materially and adversely affect the location, orientation, design, construction, or use of buildings (or unreasonably disturb the business conducted thereon) or other improvements to be constructed on a Parcel upon which the utility easement is located, unless first approved in writing by the Owner of the affected Parcel.

5.4 Advertising. Unless otherwise provided in this Agreement, any and all Signs within the Parcels will solely advertise the Retail Center and the businesses and Occupants located within the Retail Center and the services and/or products that they offer. Nothing herein shall prevent “for sale” or “for lease” signage, signage advertising for hiring employees, or signage noting contractors or lenders associated with construction within the Retail Center. Notwithstanding the above, the Retail Center Signs may contain an LED display that may advertise businesses, products and services located or provided outside of the Retail Center.

6. INDEMNIFICATION AND INSURANCE.

6.1 Indemnification. Each Owner and Occupant (“**Indemnifying Party**”) hereby indemnifies, holds harmless and agrees to defend each other Owner, Occupant, the Manager and Declarant (“**Indemnified Party(ies)**”) from and against all claims, damages, expenses (including, without limitation, reasonable attorneys’ fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to the Parcels occurring in the Parcels and/or on the ways immediately adjoining the Parcels, caused by (a) the active or passive negligence or willful misconduct, or (b) the use and operations, of the Indemnifying Party, its agents, servants, employees or contractors on or about the Parcels; provided, the Indemnifying Party does not indemnify the Indemnified Party against any injury, loss of life, or damage which is caused by the active or passive negligence or willful misconduct of the Indemnified Party, the other Owners or Occupants on or about the Parcels, its or their agents, servants, employees or contractors. The Parties’ obligations with respect to indemnification hereunder will remain effective, notwithstanding the expiration or termination of this Agreement, as to claims arising or accruing prior to the expiration or termination of this Agreement.

The indemnification obligation herein will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under worker’s compensation acts, disability benefit acts, employee benefit acts, or otherwise. In addition, the indemnification obligation set forth herein is a contractual obligation of the Owner and will not be diminished by any insurance coverage or any restriction, cap or other provision of governmental immunity law or similar doctrine.

6.2 Insurance. Each Owner will obtain and maintain and cause its Occupants to obtain and maintain the following insurance coverages:

(a) a policy of commercial general liability insurance providing coverage on an occurrence basis with limits of not less than Two Million Dollars (\$2,000,000) per occurrence

and in the aggregate, which policy shall satisfy the following requirements: (i) the policy shall insure Owner (or Occupant), (ii) the policy will include premises and operations liability coverage, products and completed operations liability coverage, broad form property damage coverage including completed operations, blanket contractual liability coverage, and personal and advertising injury coverage; and (iii) the other Owners, Manager and Declarant shall be endorsed as additional insureds. The insurance required under this Section may be satisfied by inclusion of the applicable premises within the coverage of a so-called "blanket" policy or policies of insurance so long as Owner satisfies the requirements pertaining to such insurance coverage.

(b) if an Owner or Occupant maintains any corporate owned vehicles, a policy of commercial automotive liability insurance on an occurrence basis providing coverage on an occurrence basis with not less than a Two Million Dollars (\$2,000,000) combined single limit covering liability arising out of operation of owned, hired and non-owned vehicles.

(c) a policy of commercial property insurance in an amount not less than one-hundred percent (100%) of the full replacement cost of any buildings or improvements located on such Parcel, excluding footings, foundations, and other portions of buildings and improvements that are customarily not insurable, which policy shall satisfy the following requirements: (i) the policy will contain a waiver of subrogation in favor of Declarant, Manager, and the other Owners, (2) the policy will contain an equipment floater to cover such Owner's fixtures and equipment (provided that an Owner may elect to self-insure the risk associated with the equipment floater), and (3) the policy will contain an ordinance or law coverage endorsement. Such Owner will keep such insurance in full force and effect for and during the time the Building is located on the Parcel.

(d) a policy of workers' compensation insurance for all of its employees who work at or visit the Parcels and Employers Liability Insurance with coverage and minimum limits of the greater of those required by Utah Law or the following: (i) bodily injury by accident (\$500,000.00 each accident); (ii) bodily injury by disease (\$500,000.00 policy limit); and (iii) bodily injury by disease (\$500,000.00 each employee).

Each Owner will provide the Manager, Declarant and the other Owners with a certificate of insurance evidencing the existence and amounts of such insurance Certificates of Liability Insurance for liability coverages. Neither the issuance of any such insurance policy nor the minimum limits specified in this Section shall be deemed to limit or restrict in any way an Owner's or Occupant's liability arising under or out of this Agreement.

6.3 Contractor's Insurance. During the period of any construction on, in or about a Parcel by, through or under an Owner or Occupant, such Owner or Occupant agrees to obtain, or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

(a) Workers' compensation;

(b) Employer's liability: ongoing and (a) bodily injury by accident (\$500,000.00 each accident); (b) bodily injury by disease (\$500,000.00 policy limit); and (c) bodily injury by disease (\$500,000.00 each employee); and

(c) Commercial General Liability policy satisfying the requirements set forth in Section 6.2(a) above.

(d) "All Risks" builders risk insurance (in an amount not less than the amount of the contract).

(e) Commercial Automotive Liability providing coverage on an occurrence basis with not less than a One Million Dollars (\$1,000,000.00) combined single limit covering "Any Auto."

(f) Independent Contractor's Liability with the same coverage as in 6.2(a) above, if applicable.

(g) Products/Completed Operations Coverage, which shall be kept in effect for two (2) years after completion of work.

(h) "XCU" Hazard coverage, if applicable.

If any construction activity involves the use of another Owner's Parcel, then Declarant and the Owner and Occupants of any Parcel adversely affected by such construction will be endorsed as an additional insured under contractor's liability insurance coverage and the contractor's liability insurance coverage shall be primary and non-contributory to any insurance maintained by Declarant or such Owner or Occupant. All endorsements creating additional insured status on behalf of the Owners shall be acceptable to Declarant and shall be at least as broad as additional insured. The contractor's insurance will provide that the same will not be canceled without at least thirty (30) days' prior written notice to the named or additional insureds.

6.4 Waiver of Certain Rights. With respect to any loss or damage that may occur to any Parcel (or any improvements thereon), arising from any peril customarily insured under a commercial property (cause of loss – special perils form) insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners and Occupants, their agents, servants or employees, the Owner or Occupant suffering such loss hereby releases the other Owners, Occupants, Manager or Declarant from all claims with respect to such loss; and the Owners and Occupants each agree that their respective insurance companies will have no right of subrogation against the other Owners, Occupants, Manager or Declarant on account of any such loss, and each Owner and Occupant will procure from its respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners, Occupants, Manager and Declarant which the insurers might otherwise have under such policies. Each party will notify the other if such party's insurance would be so invalidated.

6.5 General. The insurance required under this Agreement will be (a) issued by an insurance company authorized to do business in the state in which the Retail Center is located, (b) have a rating of no less than A- as published by A.M. Best Company or equivalent if such changes, and (c) provide for at least ten (10) days' written notice, by certified mail to the other party before cancellation, termination or non-renewal of such insurance. A certificate evidencing the coverage required to be maintained by the applicable party will be delivered to the other party upon request.

7. DAMAGE OR DESTRUCTION. In the event any building in the Parcels is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Parcel upon which such building is located may, in its sole, subjective discretion, demolish or rebuild the damaged building. In the event an Owner determines to demolish a damaged building, that Owner will either promptly construct a new building on the same location or leave and maintain the Parcel of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds and sealed against dust by paving, landscaping or other ground cover, and otherwise maintained in a condition similar to other first-class shopping centers in Utah County, Utah until such time as new construction is commenced. In the event an Owner determines to rebuild a building located on its Parcel, such Owner will forthwith proceed with due diligence to remove any debris and to restore such building to substantially the same condition as immediately prior to such damage or destruction. In the event the Common Area or any portion thereof shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Common Area so damaged or destroyed shall forthwith proceed with due diligence to restore such Common Area to its condition immediately prior to such damage or destruction in order to permit vehicular parking (in the manner required by this Agreement) and free and safe vehicular and pedestrian access and circulation in the Parcels and to and from all adjacent streets. If the Owner of the Common Area that is damaged or destroyed fails to restore the damaged or destroyed portion of the Common Area, the Manager and/or Declarant will have the right to restore such damaged portion of the Common Area.

8. EMINENT DOMAIN.

8.1 Owner's Right to Award. Nothing herein will be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, or transfer in lieu thereof, affecting any other Owner's Parcel, or to give the public or any government any rights in any Parcel. In the event of any exercise of eminent domain, or transfer in lieu thereof, of any part of the Common Area, the award attributable to the land and improvements and compensation damages of such portion of the Common Area will be payable to the Owner in fee of such Parcel (the allocation of any award between the fee Owner and any Occupant of such Parcel shall be set forth in the lease between such parties), and no claim thereto will be made by the Owners of any other portion of the Common Area. The allocation of any claim applicable to a Parcel between any landlord/Owner and a tenant/Occupant will be based upon the terms and conditions of the lease agreement between such entities.

8.2 Collateral Claims. All other Owners or persons having an interest in the Common Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

8.3 Occupant Claims. Nothing in this Section will prevent an Occupant from making a claim against an Owner pursuant to the provisions of any lease between an Occupant and such Owner for all or a portion of any such award or payment.

8.4 Restoration of Common Area. The Owner of the fee title of each portion of any Common Area so condemned will promptly repair and restore the remaining portion of the Common Area so owned as near as practicable to the condition of the Common Area immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner. The plans and specifications for such repair and reconstruction will be approved by Manager and Declarant and the repair and reconstruction will be overseen by Manager consistent with the terms and conditions of this Agreement.

8.5 Restoration of Improvements. In the event any Improvements (excluding Common Area) or any portion thereof located in the Parcels is condemned, the remaining portion of such Improvements will be demolished or restored by the Owner of the Parcel on which it is located, and such Owner will remove all debris resulting therefrom. In the event an Owner elects to rebuild or refurbish any Improvements after such condemnation action, such Owner will proceed with due diligence to restore such Improvements to completion. In the event the remaining Improvements are removed, the Owner will thereafter maintain such affected area on the Parcel in the manner provided for in Section 7.

9. TAXES. Each Owner will pay or cause to be paid directly to the appropriate taxing authority before such taxes become past due, the real property taxes and other special taxes and assessments assessed against the Parcel owned by such Owner, including the portion of the Common Area owned by such Owner.

In the event any Owner fails at any time to pay, or cause to be paid, before delinquency its taxes or assessments on any portion of a Parcel of which such Owner has a fee interest, and which may become a lien on any of the Common Area, then any other Owner may pay such taxes and/or assessments, together with interest, penalties, and costs, and in any such event the Owner obligated to pay such taxes and/or assessments will promptly reimburse such other Owner for all such taxes and/or assessments, interest, penalties, and other charges and until such reimbursement has been made, the amount thereof will constitute a lien and charge on the Parcel(s) herein described of the defaulting Owner. Nothing contained herein will prevent an Owner from paying its taxes under protest or challenging the validity or amount of any assessment, so long as such Owner takes steps to prevent the delinquent taxes from becoming a lien on its Parcel or the occurrence of a tax sale of such Parcel. Each Owner will place each other Owner on notice for any tax liens affecting Parcels or Common Area.

10. LIENS. No mechanics', materialmen's, and other liens caused or created by, through or under an Owner or Occupant or any of its agents, contractors or licensees shall be filed against

any Parcel or any portion thereof as a result of work performed on, or materials provided to, any other Parcel. In the event any such liens are filed against any such Parcel or portion thereof, the Owner of the Parcel on which such work was performed or for which such materials were provided (“**Performing Owner**”) will immediately take the necessary steps to have such lien released. In the event the Liened Owner takes steps to remove or release such lien and the Performing Owner fails to so remove or release such lien against another Owner’s Parcel (“**Liened Owner**”) within a reasonable time (not to exceed thirty (30) days), and the Liened Owner incurs any expenses, damages or costs, including attorneys’ fees, in connection with or relating to releasing such lien, the Performing Owner will promptly reimburse the Liened Owner for all such costs, fees and expenses. The failure of the Performing Owner to reimburse such costs, fees and expenses shall provide the Liened Owner with the lien and other rights set forth in Section 14 to collect such costs, fees and expenses from the Performing Owner.

11. ENVIRONMENTAL LIABILITIES. Each Owner assumes all responsibility and liability for any and all damages, costs and claims including, but not limited to remediation costs, incurred as a result of the release of any Hazardous Material from its Parcel which migrates to (or has migrated to) or otherwise contaminates (or has contaminated) another Parcel, including, but not limited to, leaks, spills or losses or motor fuels related to underground storage tanks, piping, dispensing systems, or other facilities or activities on or about any Parcel. Each Owner will promptly comply with any and all clean-up requirements of any governmental authority having jurisdiction pertaining thereto, and will indemnify the other Owners for all costs, expenses and fees incurred by any other Owners (including attorneys’ fees in defending the same) resulting from any contamination or discharge of Hazardous Materials subject to the terms of the first sentence of this Section 11. Any and all environmental assessment and remediation work will be performed in accordance with all applicable local, state and federal laws, ordinances, rules and regulations. Notwithstanding the foregoing, the Owners do not assume responsibility and liability for, or indemnify any other Owner for, any such damages, costs or claims resulting from any such release caused by, through or under any other Owner. In the event an Owner fails to comply with the requirements of this provision pursuant to Section 14.1 of this Agreement or if from and after the date of this Agreement any Parcel is contaminated with Hazardous Materials from an outside third party source whereby the condition violates applicable Laws, Manager shall cause the Hazardous Material to be remediated in compliance with applicable Laws and the costs associated therewith shall be considered CAM costs and billed to the Owners and, notwithstanding anything herein to the contrary, each Owner will be responsible to pay its Pro Rata Share of such costs. For purposes of this Section 11 any costs will be allocated assuming that all Parcels have been fully constructed and improved. Each Owner shall have the right to file a claim against the responsible Owner for the amount paid by such Owner related to the environmental remediation efforts.

12. USE.

12.1 Permitted Uses. Each Parcel shall be used only for lawful purposes and in conformance with all Laws, including, without limitation, zoning and land use laws and ordinances, parking ratios, use, building height and setback requirements, landscaping, etc. Each Parcel shall be designed, and, if improved, improved with sufficient onsite parking to

satisfy all applicable laws and parking ratios and requirements and improved with appropriate onsite storm water detention/retention facilities.

12.2 Operation; Rules and Regulations. Each Parcel shall not be used in any manner so as to constitute a nuisance, and no Owner of any Parcel will permit the accumulation of unsightly weeds, trash, garbage, or debris. The Manager with Declarant's approval shall have the right from time to time to post and promulgate reasonable rules and regulations for the Parcels, which shall be uniformly enforced against all the Owners. The obligations set forth in this Section 12 shall be a restriction running with the land and shall not be affected by the status of any Owner that would otherwise exempt such Owner from complying with any municipal ordinances or Laws.

12.3 Prohibited Uses. No portion of the Parcels may be used for any of the following facilities, uses, or purposes:

12.3.1 A facility for any use which is illegal or would reasonably be determined to cause a threat of imminent harm to persons or Parcels, constitutes a public or private nuisance, or emits an obnoxious odor or sound that can be heard or smelled (in either event to more than a *de minimis* extent) outside any building in the Parcels as such is deemed a nuisance, it being understood that reasonable sounds and/or noises arising from the operation of a mobile installation bay incidental to the installation of car stereos and similar products shall not be deemed obnoxious.

12.3.2 Any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors or appropriately screened dumpsters located in specified locations within the Parcels as shown on the Site Plan).

12.3.3 An establishment providing (i) nude or topless entertainment or waitstaff, (ii) "head shop", (iii) adult magazine or book store, adult video store or adult "novelty" store (which are defined as stores with at least five percent (5%) of the inventory of particular categories or products (such as books, DVDs/videos) that are not available for sale or rental to individuals under eighteen (18) years old because such inventory explicitly deals with or depicts human sexuality).

12.3.4 The manufacturing, sale, display, advertisement, promotion, or distribution of pornographic, lewd, obscene, or adult-oriented (as such terms are defined and applied by applicable Laws) (i.e., "x" rated) books, magazines, photographs, prerecorded video cassettes, video tapes, video discs, laser discs, video games, digital video discs or other video software and/or any substitutes for, or items which are, technical evolution of the foregoing items (collectively, "**Media**") (exclusive of the sale or rental of Media by a national bookstore, video store, or electronics retailer normally located in first-class shopping centers in the state where the Parcels are located (such as, for example, Barnes & Noble, Best Buy, etc.).

12.3.5 Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation,

except for storage and/or production of products incidental to the retail sale thereof from the store.

12.3.6 Any pawn shop, "second hand" store, or "surplus store"; provided, however, that this provision shall not restrict or prohibit (a) the ancillary sale of consumer electronics merchandise, regardless of whether new, used or refurbished or any chain retailers that are customarily found in similar shopping centers to the Retail Center in the State of Utah, such as Best Buy, FYE, Smart and Final, or Game Stop, (b) any clothing retailers traditionally located in similar shopping centers, which sell, in not more than ten percent (10%) of their retail space, used clothing, jewelry and accessories, (c) a jewelry store that sells jewelry on a consignment basis, or (d) any other sale which is incidental to business not otherwise prohibited in this Agreement.

12.3.7 Any conduct or advertising of a fire sale, "continuous" sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an Occupant to determine its own selling prices nor shall it preclude the conduct of any seasonal sales, promotional or clearance sales or legitimate going-out-of-business sales in compliance with applicable Laws).

12.3.8 Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Parcels are located.

12.3.9 Any automobile, truck, trailer, recreational vehicle, mobile home or boat sales, leasing, display, service and/or repair operation; provided, however, this prohibition shall not prohibit or restrict a tenant/Occupant incidental to its primary use, from (a) operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, (b) the leasing of trucks by the hour by any tenant/Occupant to its customers for the sole purpose of transporting purchases from such tenant/Occupant's premises to the customer's home, storage, or use destination, (c) services offered by a full line, regional or national chain automotive parts and accessories stores, or (d) selling recreational vehicles, trailers, trucks, automobiles or boats or leasing the same.

12.3.10 Any bowling alley, skating rink or roller rink.

12.3.11 Any mortuary or funeral home.

12.3.12 Any veterinary hospital or animal raising or boarding facilities (provided, however that a full-line pet and pet supply store shall be permitted to offer veterinary services (and to allow the overnight boarding of animals in connection with such services).

12.3.13 Any bar (except as an incidental use to a retail, restaurant or commercial business, in which case such use shall be restricted to less than ten percent (10%) of the floor area occupied by such business), pub, tavern, or night club, unless otherwise approved by Declarant.

12.3.14 Any operation whose primary use is a flea market, amusement center, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games), pinball, computer or other game rooms, pool or billiard hall, dance or music hall, dancing establishment (including, but not limited to striptease or burlesque style dancing), disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation (except that this prohibition shall not prohibit (x) Chuck E Cheese or another similar fast food establishment, so long as it is open and operating as a restaurant from having an amusement or video arcade, children's play center, pinball, computer and/or other game room and other physical play activities for children, kiddie rides and games as part of its leased premises in the Parcel to the extent permitted under its lease, or (y) a retail business or consumer electronics store (such as Best Buy) from operating video or gaming equipment for demonstration purposes), or (z) a dance studio (whether for ballet or other artistic type of dance) or a dance studio such as an Arthur Murray dance studio, as long as such contains not more than 5,000 square feet of gross leasable area.

12.3.15 Any training or educational facility, including but not limited to: beauty schools (if such require tuition), barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers (excluding martial arts and/or dance-type studios), or any day care center; provided however, this prohibition shall not be applicable to any of the following, to the extent the same are incidental to an Occupant's business at the Retail Center: (a) any onsite employee training by an Occupant, or (b) any "how to" training for customers.

12.3.16 Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; operation offering table games such as blackjack or poker; slot machines, video poker/black-jack keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant and in compliance with all applicable laws. Notwithstanding the above, this paragraph is not intended to prohibit the installation and use of video game machines by the Occupants, subject however to the provisions of Paragraph 12.3.14 above.

12.3.17 Any carnival, amusement park or circus.

12.3.18 Any banquet hall, auditorium, or other place of public assembly if such is the primary purpose of the use; provided that this shall not prohibit restaurants (except that a restaurant otherwise permitted herein shall be permitted to have private rooms for parties on an incidental basis (e.g. – not comprising more than fifteen percent (15%) of its gross leasable area).

12.3.19 Any use which is primarily for religious worship.

12.3.20 Any liquor store (provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any Occupant ancillary to its primary

use of the premises, or the sale of beer, wine or alcohol for on-premises consumption at any restaurant or bar permitted hereunder).

12.3.21 A gymnasium body-building establishment, basketball or racquetball courts, or fitness center with on-site showers or locker rooms containing in excess of 5,000 gross leasable area in the aggregate, excluding tanning salons, spas, massage parlors, or exercise facilities such as martial arts studios or women's fitness studios, such as Curves or Orange Theory Fitness.

12.3.22 Any use that may discharge Hazardous Substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all Hazardous Substances Laws.

12.3.23 An operation whose primary purpose is as a theater or cinema of any kind, excluding those used for demonstration purposes incidental to primary use, such as a display room in a consumer electronics store such as Best Buy or a television room to occupy young children.

12.3.24 Any shooting gallery or range.

12.3.25 Any residential use, such as living quarters, sleeping apartments, hotel, or lodging rooms.

12.3.26 Any library or government office or facility, including, without limitation, a post office.

12.3.27 Any establishment that stocks, displays, promotes, distributes, sells, rents, or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous or illicit drug, marijuana, or other controlled substance, including without limitation, any hashish pipe, water pipe, bong, chillum, pipe screens, rolling papers, rolling devices, coke spoons or "roach" clips (exclusive of and not intended to prohibit the sale of controlled substances, narcotics, drugs, etc. as part of a licensed pharmacy operation, including but not limited to a stand-alone pharmacy or those found in grocery stores, a "Walgreens," "CVS," etc.).

12.3.28 Any outdoor meetings, events or promotional activities (but shall not prohibit and/or restrict the use of a portion of the Common Area permitted for temporary promotional activities).

12.3.29 A junkyard or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

12.3.30 Any establishments with any striptease, burlesque or similar dancing, or that exhibit either live or by other means to any degree, nude or topless dancers or wait staff.

12.3.31 An operation whose primary purpose is the manufacturing, sale, display, or distribution of items that appeal to prurient interest in sex, including, without limitation, lingerie (which does not include pajamas, sleepwear, gowns, undergarments, underwear, etc.) or “sex toys;” provided that this restriction does not apply to operations that display or offer for sale an incidental amount of such items (incidental sales shall mean that the floor area dedicated to such items is less than five percent (5%) of the gross leasable area of such store).

12.3.32 Offices or office space for corporate office use on the first level or floor of a building in excess of 3,000 square feet of gross leasable area that is not an incidental use for the support of the retail operations conducted within a building; provided, however, that offices related to professional or service industries shall not be prohibited, including, but not limited to, dental, medical, real estate brokerages, title companies, financial institutions, accountant, attorney, insurance, banking, optical, and/or optometrist offices and the like. There is no restriction on office use on second or mezzanine levels or floors.

12.4 Restricted Uses. Intentionally omitted.

12.5 Telecommunications. Owners will have the right to install Satellite Equipment on the roof of the buildings at a location agreed to by Declarant. To the extent reasonably possible, the Satellite Equipment will be positioned whereby it is not visible from the ground level of the Retail Center. The Owner will cause the Satellite Equipment to be operated in accordance with guidelines of the Federal Communications Commission and in a manner as to not interfere with the equipment and machinery of other Occupants in the Parcels.

12.6 Common Area Use. The drive aisles and parking areas of the Common Area shall be used for vehicular access, circulation and parking, ingress and egress to and from and within the Parcels, and pedestrian traffic and the use of customers, invitees, licensees, agents and employees of the Owners and business Occupants of the buildings constructed on the Parcels, and for the servicing, promoting, advertising, marketing, and/or supplying of such businesses. In addition, the Common Area may be used (i) on a temporary basis subject to Section 2.3 of this Agreement as a staging area in connection with the construction and repair of any buildings, and/or Common Area in the Parcels so long as such use does not occupy more area than is reasonably required nor unreasonably restrict access to and from the Parcels or the conduct of business within the Parcels or access to and from the adjacent streets; (ii) in connection with the construction, maintenance and repair of utility lines, and water drainage and supply systems, so long as such activity is undertaken in strict compliance with the requirements of Section 3.3; and (iii) any other use required by Law. Except as specifically provided otherwise in this Agreement, no building, barricade or structure may be placed, erected or constructed within the Common Area on any Parcel; provided, however, Retail Center Signs (to the extent not herein prohibited) and directional signs, bumper guards or curbs, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, columns or pillars supporting roof overhangs, patio areas or outdoor seating areas (which may include tables, benches, chairs, umbrellas, railing systems), benches, tables, chairs, bike racks, shopping cart corrals, grease traps and/or grease receptacles, trash enclosures, trash bins, trash cans, trash receptacles, and any other improvements as may be required by Law may be placed in the Common Area subject to the terms and conditions of this Agreement.

12.7 Parking. The number of parking spaces and the drive aisles maintained on each Parcel and the size and configuration thereof shall be as depicted on the Site Plan, which Site Plan has been approved by Declarant. Any change to the parking configuration or the drive aisles in the Parcels shall require the prior written approval of Manager. No such approval shall be deemed granted by Manager unless evidenced by an amendment to this Agreement, which amendment shall be duly recorded in the Utah County, State of Utah. Such amendment shall attach and incorporate an amended Site Plan showing the reconfiguration of the parking spaces or drive aisles, as the case may be. Manager may, in its reasonable discretion and acting in the best interests of the Parcels collectively, withhold its approval of the reconfiguration of parking areas or drive aisles located on the Parcel. Approval of any other reconfiguration shall not be unreasonably withheld, conditioned, or delayed. No charge for parking will be assessed against any Owner, Occupant, or their employees, guests, customers, or invitees.

12.8 Employee Parking. Specific areas within the Common Area to be used for motor vehicle parking purposes by employees of Occupants of the Parcels shall be located on the Parcel upon which the Occupant conducts business. In the event employee parking areas are designated as provided herein, employees of any Owner or Occupant of any building in the Parcels shall use only those portions of the Common Area designated for such employee motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or commercial establishment in the Parcels.

12.9 Owner's Parcel. The Owner of each Parcel will use and cause to be used the Common Area on its Parcel exclusively for the uses specified herein and in such manner as will not unreasonably interfere with the primary purpose of the Common Area, which is to provide for parking and access for the Owners, customers, invitees, employees, agents and licensees of the businesses located within the buildings in the Parcels, and for the servicing and supplying of such businesses to be reasonably determined by Declarant. There shall be no sale or display of merchandise of any kind in any portion of the Common Area or on any sidewalks adjacent to any buildings without the prior written consent of Manager, which may be granted or withheld in Manager's sole and subjective discretion.

12.10 Cart Corrals and Carts. Each Owner shall have the right to place cart corrals within portions of the parking area located on such Owner's Parcel in locations mutually agreed upon by Declarant and the Owner. In addition, other Owners and Occupants of the Parcels may place cart corrals in the parking area located on the Parcel owned or occupied by them, subject to the prior approval of Declarant, which may be granted or withheld in Declarant's sole and absolute discretion. The Owner or Occupant placing cart corrals within the parking area of the Parcels, at their sole cost and expense, shall maintain and repair any cart corrals in a good, clean, attractive, and operational condition. In the event an Owner or Occupant fails to maintain and/or repair any cart corral, Manager may maintain or repair such cart corral and charge such Owner or Occupant for the costs incurred or may require the Owner or Occupant to remove the cart corrals. Any Owner or Occupant placing cart corrals in the parking area of the Parcels shall comply with any and all applicable laws, including, but not limited to, parking requirements. If an Owner or Occupant has shopping carts, such Owner or Occupant must have a shopping cart program whereby the shopping carts will be properly stored (both temporarily while in use and

permanently), such as through the use of cart corrals or other means and whereby the shopping carts will be collected on a frequent and/or regular basis. In the event an Owner or Occupant fails to regularly collect shopping carts, the Manager may have the shopping carts collected and the Owner or Occupant shall reimburse the Manager for the costs associated with the collection of the shopping carts. Each Owner or Occupant that has shopping carts shall be responsible for any damage or injury caused by their shopping carts within the Common Area.

13. COMMON AREA MAINTENANCE.

13.1 Maintenance of Parcels. Subject to the obligations of Manager pursuant to Sections 13.2 and 13.3 below, each Owner will maintain and repair, or will cause to be maintained and repaired, their own Parcels (including the Common Area located thereon) in a first-class condition and will keep, or cause the same to be kept, in good condition and repair. Until such time a Parcel is improved with Building Improvements and/or Subsequent Common Improvements, the Owner of such Parcel, at its sole cost and expense, shall maintain such unimproved Parcel in a smooth, level condition, free and clear of all refuse and weeds and sealed against dust by paving, landscaping or other ground cover, and otherwise maintained in a condition similar to other first-class shopping centers in Utah County, Utah until such time as construction is commenced. Notwithstanding anything herein to the contrary, each Owner is responsible for the maintenance and repair of the buildings located on its Parcel.

13.2 Manager. From and after the date each Occupant opens for business in the Parcels, Manager shall operate, manage, and control the Common Area for such Parcel(s) and shall have the right to temporarily close or modify Common Area in order to maintain or repair these areas, or to prevent public dedication of any portion of the Common Area; provided, however, that except as described herein, Manager shall not place or permit to be placed by any person or entity, any building, wall, landscaping, fence or other Improvement (except asphalt or pavement), or to make any alterations or changes to the Common Area without the prior written approval of the Owner of the subject Parcel, which approval may not be unreasonably withheld, conditioned or delayed. For avoidance of doubt, Owners do not have the right to change or alter the Common Area without the Manager's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. However, Manager shall have the right to temporarily close any portion of the Common Area for emergencies, after business hours, or to prevent public dedication of any portion of same. If such actions occur, Manager shall take reasonable steps to limit the impacts of such closures or modifications on the business operations within the Parcels.

13.3 Maintenance Obligations. Commencing as of the date each Occupant opens for business in the Parcels, the Manager will operate, manage, maintain, repair, or will cause to be operated, managed, maintained, and repaired in a first-class condition the Common Area located within such Parcel(s). The Common Area will be operated, managed, maintained and repaired consistent with other comparable shopping centers in Utah County, Utah and in accordance with the following, which standards shall apply to the Manager and any Owners:

13.3.1 Maintaining all paved surfaces of the Common Area (including the public sidewalks along public streets) in a level, smooth evenly covered condition and cleaning, sweeping, restriping, repairing and resurfacing the paved surfaces of the Common Area as

needed with the type of surfacing material originally installed or such substitute as will in all respects be equal or superior in quality, use and durability, and reasonably free of snow, ice, and debris.

13.3.2 Removing all papers, debris, filth and refuse, scraping and clearing ice and snow, and sweeping the Common Area to the extent reasonably necessary to keep the Common Area in a clean and orderly condition.

13.3.3 Installing, placing, maintaining, repairing, and replacing any appropriate project signs, directional signs, curb stops, roadway markers, and parking stall lanes or other striping.

13.3.4 Operating, repairing, and replacing, where necessary, such artificial lighting facilities as shall be reasonably required; provided that the Common Area lighting shall be kept to the level originally designed and constructed in terms of coverage and brightness.

13.3.5 Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines and replacing shrubs and other landscaping as are necessary.

13.3.6 Maintaining and repairing any and all fire loop lines or other fire protection devices, walls and fences, common storm drains, utility lines, sewers, irrigation systems and other Utility Systems and services which are located on, under or upon the Common Area, which are necessary for the operation and maintenance of the Common Area Improvements.

13.3.7 Maintaining and repairing any and all Retail Center Signs (provided that the Owners' and Occupants' obligation to contribute toward such costs shall be consistent with the terms and conditions of Section 5.2 and Section 13.5 of this Agreement).

13.3.8 Keeping the Common Area free from obstructions not required or permitted hereunder, including, without limitation, obstructions caused by the sale or display of merchandise outside the exterior walls of the buildings located within the Parcels.

13.3.9 Employing the necessary personnel, contractors, subcontractors and other persons required for operation and maintenance of the Common Area.

Manager shall use reasonable efforts in using and maintaining good shopping center practices to control and minimize the CAM Costs and Insurance Costs. Any income Manager derives from the Common Area (including, without limitation, parking charges and rental or usage fees for promotional events) will be credited against the total CAM Costs before the Owners' proportionate share of CAM Costs is calculated. Manager will notify the Owners in writing at least ten (10) days prior to the commencement of any construction, repair or paving of the Common Area, and/or any restriction or closure of any access roads or entrances to the Parcels.

13.4 Annual Budget. At least thirty (30) days prior to the date the first Occupant opens for business within the Parcels and the commencement of each calendar year thereafter,

the Manager will prepare and furnish to the Owners of the Parcels that have Occupants (and thereby, maintained by Manager) a proposed budget for CAM (including the costs to operate, manage, maintain, repair and insure the Common Area as required herein) to be incurred by Manager for the forthcoming calendar year (the "**Annual Budget**") related to the operation, management, maintenance, and repair of the applicable Common Area, including a reasonable reserve fund to be established and solely used for capital expenditures (i.e., parking lot repairs, slurry sealing, asphalt overlays, resurfacing, and replacement or repair of Common Area Improvements), which amount will be based upon the anticipated capital expenditures during the next five-year period (the "**Reserve Fund**"). Notwithstanding the Reserve Fund, any Owner shall have the right to elect in writing (such as through a letter to the Manager) not to contribute toward the Reserve Fund so long as such Owner commits to pay the Owner's Pro Rata Share of the actual costs of any capital expenditures as they become due. Manager's costs and expenses to obtain and maintain insurance related to the Common Area and its obligations herein shall be a CAM cost. In the event an Owner has not received the Annual Budget within the time frame indicated above, such Owner will provide a written notification to Manager informing Manager of such non-receipt and include a formal request to receive the Annual Budget. The Annual Budget will be based upon good faith estimates based upon actual costs and expenses, if applicable, for the projected costs and expenses related to operation, management, maintenance, repairs and insurance incurred by the Manager related to the Common Area. The Annual Budget may contain an administrative fee not to exceed fifteen percent (15%) of the projected CAM costs, excluding the cost and expense of the Manager's insurance and taxes (which will be paid by the individual Owners) (the "**Administrative Fee**"). The Administrative Fee represents the Manager's administrative, management, labor and overhead costs associated with performing CAM. The Manager may retain a third party management company to perform Manager's obligations under this Declaration. In such an event, any management fee payable to a third party management company shall be in lieu of the Administrative Fee and shall not exceed the amount of the Administrative Fee that would have otherwise been payable. Nothing in this Agreement will be construed to limit any management fee and/or Administrative Fee that an Owner may charge its tenants or Occupants of such Owner's parcel.

Notwithstanding anything herein to the contrary, the CAM costs and the Annual Budget shall not include the following costs and expenses: (a) Common Improvement Costs or the costs of initially constructing the Common Area Improvements or any Building Improvements within the Parcels; (b) costs of leasing buildings or structures within the Parcels; (c) costs attributable to enforcing leases against tenants or Occupants in the Parcels, such as attorneys' fees, court costs, adverse judgments, and similar costs; (d) costs of repairs caused by poor workmanship or materials related to the initial construction of the Common Area Improvements (which costs shall be borne by the Owner responsible for constructing the same); and (e) income or franchise taxes or such other taxes imposed upon or measured by Manager's income from its CAM obligations.

13.5 Utility Costs. The electrical costs associated with Common Area lighting facilities and the Retail Center Signs shall be included in CAM Costs. The water costs associated with the secondary irrigation water servicing the Common Area is assessed and billed to various Owners of the Parcels; provided, however, if the water costs associated with the secondary irrigation water servicing the Common Area is assessed and billed to Declarant or

Manager (other than for Declarant's or Manager's own Parcel), the water costs shall be included in CAM Costs. Upon receipt of any statement, bill, or invoice for electricity or water that services the Common Area, the Owners receiving the same shall promptly provide the statements, bills, or invoices to Manager. The costs associated with electricity and water that services the Common Area shall be included as part of the CAM costs. Notwithstanding the above, each Owner shall pay the costs associated with electricity and water that services the landscaping and area behind the curb adjacent to any building located on a Parcel.

13.6 Payment of Each Owner's Share of the Annual Budget.

From and after the date that the first Occupant opens for business within the Parcels, each Owner will pay the Manager one-twelfth (1/12) of its Pro Rata Share of the Annual Budget to Manager on or before the tenth (10th) day of each calendar month for the ensuing calendar year. An Owner's Pro Rata Share of CAM costs as set forth in the Annual Budget for any fractional calendar month will be prorated and paid on or before the first (1st) day of the first full calendar month following such fractional month. An Owner's "**Pro Rata Share of CAM Costs**" means a fraction, the numerator of which is the square footage of Improved Parcels owned by an Owner and the denominator of which is the total square footage of Improved Parcels located within the Parcels. Notwithstanding the above, the installation cost of the Retail Center Signs and the operation, management, maintenance, and repair thereof will be allocated by Manager to the Owners or the Occupants that have a sign face(s) and/or sign panel(s) (or such equivalent electronic version) on the Retail Center Signs in an equitable and reasonable manner and shall not be considered part of the Pro Rata Share of CAM Costs. Further, notwithstanding the above, any damage to the Common Area caused by an Owner's use of the Common Area will be the sole responsibility of that Owner and shall not be considered part of the Pro Rata Share of CAM Costs; by way of example, and not by way of limitation, any damage to the Road caused by an Owner or its contractors or agents during the construction of improvements on such Owner's Parcel shall be the sole responsibility of the Owner.

The amount in the Reserve Fund shall be used and applied toward any capital expenditures incurred during the applicable calendar year. In the event the amount in the Reserve Fund exceeds the actual capital expenditures for any calendar year, any excess amount shall remain in the Reserve Fund to be used for future capital expenditures. In the event the amount in the Reserve Fund is not sufficient to pay for the capital expenditures, each Owner will be responsible to pay its Pro Rata Share of any deficiencies as part of the CAM costs. In the event an Owner does not pay its Pro Rata Share of the Reserve Fund contributions, such Owner shall pay any such deficient amount as part of CAM Costs in the year such capital expenditures are incurred.

Within ninety (90) days after the end of each calendar year, the Manager will deliver to each Owner a written itemized statement ("**CAM Statement**") showing the amount of the actual CAM Costs for the preceding calendar year, the amount paid by such Owner toward CAM Costs during the preceding calendar year, and any amounts due from such Owner to the Manager for such Owner's Pro Rata Share of such CAM Costs and/or any amounts due from the Manager to such Owner (the "**Reconciliation Share**"). Any Reconciliation Share due from the Manager to an Owner will accompany such CAM Statement. Any Reconciliation Share due from an Owner

to the Manager will be paid within thirty (30) days after receipt by such Owner of the CAM Statement. Upon request, the Manager will provide any Owner copies of all bills, payment applications, invoices and receipts for CAM performed and other reasonable supporting documentation, including the calculation of such Owner's Pro Rata Share with a breakdown of the square footage of the Improved Real property in the Parcels and the Improved property on such Owner's Parcel. Unless an Owner raises any objections to the CAM Statement within one hundred fifty (150) days after receipt of the same, the CAM Statement shall conclusively be deemed correct and accepted by the Owner except to the extent Owner exercises its audit rights as set forth below. If an Owner does timely object to the CAM Statement, the Manager and the Owner will negotiate in good faith to resolve any disputes. In the event the Manager and an Owner cannot amicably resolve any dispute, the parties agree to retain a certified public accountant experienced in shopping center management to review the CAM Statement and the calculation of the Owner's Pro Rata Share of the CAM Costs. Any objection of an Owner to the CAM Statement and resolution of any dispute shall not postpone the payment of any undisputed amounts due the Manager by the Owner. Failure of the Manager to deliver the CAM Statement in a timely manner does not relieve an Owner's obligation to pay any amounts due Manager pursuant to a CAM Statement subsequently delivered.

The Manager will provide lighting within the Common Area at all times and at such intensity consistent with the level originally designed and constructed in terms of coverage and brightness subject to applicable Laws. The Common Area lighting solely includes the freestanding light fixtures servicing the drive aisle and parking areas and landscaping lighting. The Common Area lighting does not include lighting attached to buildings or structures or lighting for landscaping adjacent to buildings where the lighting is not separately metered. Any electricity for exterior building or landscaping lighting that is not included as part of the Common Area lighting may be billed and payable by the Occupants of the applicable building pursuant to the terms of the applicable leases. In the event the costs for electricity and water servicing the Common Area is not included as part of the Annual Budget, each Owner will pay its Pro Rata Share of the cost of the electricity and water servicing the Common Area within thirty (30) days after the date of a statement or invoice therefor provided by Manager.

The Manager will maintain the books and records for the CAM costs (the "Records") for a period of at least three (3) years. Upon thirty (30) days' prior written notice, any Owner may examine or audit the Records for the previous two calendar years at any reasonable time during normal business hours at the Manager's place of business or where the Records are maintained and kept. The Owner performing such audit will bear its own cost of performing such audit unless the audit reveals Manager has overcharged Owner four percent (4%) or more of Owner's proper Pro Rata Share of CAM Costs as determined by the audit, in which event Manager shall be responsible to bear the cost of the audit and shall reimburse Owner for all overcharges. For avoidance of doubt, Owner shall not be permitted to engage an auditor on a contingent-fee basis for such audit. Moreover, Manager shall only be responsible for reimbursing an over-charged Owner in the event that Manager received more compensation than is allowed by this Agreement. Finally, in the event an Owner contributed less than required under this Agreement, such Owner shall reimburse the Manager or the other Owners, as the case may be, in the amount of such under-charge.

Declarant covenants and agrees to cause all future owners of the property located directly to the south of the Parcels that have frontage along the Road to agree to pay their pro rata share of the maintenance of the Road beginning at such time as the applicable property owner starts to use the Road in connection with preparing to open for business, including without limitation, using the Road for purposes of making improvements to the applicable owner's property. Further, Declarant covenants and agrees to cause all future owners of the property located directly to the south of the Parcels to bear sole responsibility for any damage to the Road caused by such owner's or its contractors' or agents' use of the Road.

13.7 Maintenance by Owners. The Owner or Occupant of each business within the Parcels will maintain, at its own expense, the buildings, including exterior walls, parapets, roofs, overhangs, canopies, vestibules, and downspouts, and all costs associated with the maintenance and operations of the buildings, and all improvements located "curb-in", including the curbs, sidewalks and walkways, landscaping, and irrigation systems serving such landscaping, located on their respective Parcels. The costs to maintain and operate buildings and the curb-in improvements may be allocated to the Occupants of such buildings pursuant to the terms of their respective leases.

13.8 Manager's Resignation. If the Manager desires to resign as the Manager, it may do so by giving the Owners written notice of its resignation as the Manager, which resignation shall not take effect earlier than sixty (60) days following the date that the last of the Owners receives such notice. If the Manager resigns as the Manager for the Parcels as provided above, Westlake Partners shall either become the Manager or shall appoint the replacement Manager; if Westlake Partners does not become the Manager or appoint a replacement Manager for any reason within the sixty (60) days following the date the last of the Owners receives the Manager's notice of resignation, the Owners of three (3) Parcels, acting together, may appoint the Manager. At such time as Declarant no longer owns any Parcel, the Owners representing three (3) of the Parcels, acting together, may appoint a Manager. In such event, Owners representing four (4) of the Parcels may act together to remove a Manager.

In addition to any remedies specified in Section 14, the Manager may elect to discontinue CAM on any Owner's Parcel if such Owner fails to timely pay its Pro Rata Share of the CAM Costs as set forth in the Annual Budget for three (3) consecutive months or four (4) months out of any calendar year or if such Owner refuses to pay its Pro Rata Share of the CAM Costs for any calendar year. In the event the Manager discontinues CAM on any particular Parcel as provided above, or as to any Protesting Owner's Parcel where the Protesting Owner assumes the CAM obligations on its Parcel as set forth in Section 13.12 below, and/or in Manager's sole discretion, with any or no reason: (a) the Owner of such Parcel, at its sole cost and expense, will perform CAM on its Parcel (including maintaining a Commercial General Liability insurance policy in conformance with Section 6.2 endorsing Manager, Declarant and the other Owners as additional insureds) as set forth herein, (b) Manager will be relieved from any responsibility whatsoever related to such Owner's Parcel, (c) such Owner's Parcel will be excluded herein from the calculation of the other Owner's Pro Rata Share of CAM Costs to the extent that such Owner performs CAM on its Parcel and/or directly pays the costs associated with CAM performed on such Owner's Parcel, and (d) such Owner shall not be obligated to contribute toward the CAM Costs from and after the resignation date. In the event Manager elects to not

perform some items of CAM as provided in Section 13.4, but will continue to perform other items of CAM, then the Manager will continue to perform such items of CAM that Manager has elected to continue to perform and the Owner of the applicable Parcel will perform the items of CAM that the Manager has elected not to perform in accordance with the terms and conditions set forth above. In such an event, the Owner of the applicable Parcel(s) will continue to be responsible to pay its Pro Rata Share of the CAM Costs for items of CAM performed on such Owner's Parcel(s), and the Owner shall be responsible to perform, at its sole cost and expense, all other items of CAM to be performed on such Owner's Parcel.

13.9 Assumption by Declarant. If Declarant is not the Manager and Declarant is reasonably dissatisfied with the performance of the Manager, Declarant may notify the Manager in writing of such dissatisfaction, describing the basis thereof. If the Manager fails to correct or cure such dissatisfaction within a reasonable time thereafter (but in no event later than thirty (30) days unless the dissatisfaction cannot be reasonably cured within such thirty (30) day period, in which event the Manager will commence such curing or correcting within ten (10) days from the date of such notice and diligently prosecute the same to completion), or if the performance by the Manager of its maintenance duties is habitually unsatisfactory or is reasonably foreseeable to become unsatisfactory to Declarant, Declarant may, upon thirty (30) days' prior written notice and effective upon the date specified in such notice, either (i) assume all of the obligations of the Manager under this Section, in which event the Owners will reimburse Declarant for their share of costs incurred in the manner specified in this Section, or (ii) assume only that portion of the obligations of the Manager under this Section pertaining to the Parcel(s) owned by Declarant (whereupon CAM costs will be allocated consistent with the terms of Section 13.8), in which event the Manager thereafter will continue to maintain the balance of the Common Area in accordance with this Section. Declarant may require the Manager to reassume its maintenance obligations hereunder upon sixty (60) days' prior written notice.

Notwithstanding the foregoing, if the failure of the Manager to maintain the Common Area is reasonably a threat to persons, Parcels or the uninterrupted business then being conducted in the Parcels, the Manager need only be given such opportunity to cure such failure as is reasonable under the circumstances, and given such opportunity, if the Manager fails to cure, Declarant may (but will not be obligated to) cure such default and may then bill the Manager for the expense incurred. Nothing herein shall require the Manager to perform any CAM, and Manager shall not have any liability whatsoever related to the performance or non-performance of CAM or its election not to assume the Manager's obligations hereunder. Any such amount billed to the Manager by Declarant shall be paid within thirty (30) days of the Manager's receipt of such billing and in the event that such billing is not paid in full, the Manager will be in default, the unpaid portion thereof will bear interest at the Interest Rate from the date such billing is received by the Manager until paid and Declarant shall be entitled to a lien against the Manager's Parcel(s) if applicable as provided in this Agreement. The Manager may include such costs on the CAM statement (excluding interest).

13.10 Notice of Assumption. Upon the change of the Manager, the successor Manager will execute a notice of assumption of the duties, obligations, rights and remedies of the Manager, which notice will provide that the successor Manager will observe, perform and discharge each and every duty and obligation of the Manager hereunder in the place and stead of

the former Manager for a specified period (which period shall in no event be for less than three (3) years and which period shall be described by calendar dates). The notice shall be recorded in the official records for Utah County, State of Utah, and delivered to all other Owners. Such successor Manager may utilize a nominee to perform its duties and obligations without relieving it, however, of any of such duties and obligations. The successor Manager, during its tenure of office as the Manager, will have all of the rights that the initial Manager will possess hereunder, including, but without limitation, the right, in the place and stead of the former Manager, to issue the statements above contemplated, to collect, hold, and to receive and disburse receipts on account thereof. Upon assumption by the successor Manager of the responsibility for operating and maintaining the Common Area, the former Manager will transfer all books and Records relating to the operation and maintenance of the Common Area to the new Manager and provide any and all other information and documentation to effectuate the transfer of responsibility hereunder.

13.11 Third Party Management Agreement. Notwithstanding the foregoing, Declarant may enter into a management agreement with a third party, whether affiliated with Declarant or not (the “**Third Party Manager**”), for the performance of CAM as provided herein (the agreement for such services, the “**Management Agreement**”), in which event no Administrative Fee will be payable to the Manager (but the fee to the Third Party Manager will be included as part of the CAM costs) and each Owner will pay its Pro Rata Share of the expenses and fees payable under the Management Agreement. Any management fee payable to a Third Party Manager shall be commercially reasonable comparable to the management fee paid for similarly situated properties in Utah County, Utah. The Management Agreement in effect at any given time will provide that Declarant or, if Declarant or its affiliates no longer owns any Parcel, the Owners of three (3) Parcels may terminate the Management Agreement upon thirty (30) days’ written notice to the Third Party Manager; provided, however, that in the event Declarant owns one (1) or two (2) Parcels, then the Owners of three (3) Parcels have the right to approve the entering into of or may terminate the Management Agreement; it being understood and agreed, however, that so long as the terms and conditions of the Management Agreement are fair and reasonable compared to similar agreements for services in Utah County, such Owners must approve and may not terminate the Management Agreement.

13.12 Default by Manager. In the event Manager fails to perform CAM and its duties as provided herein and fails to remedy such failure within thirty (30) days after receipt of a written notice from an Owner (provided, however, if the nature of such failure/default is such that it would reasonably take more than thirty (30) days to remedy such failure/default, then Manager shall have a reasonable time as would be necessary to remedy such failure/default) (“**Protesting Owner**”), the Protesting Owner shall have the right to pursue any rights and remedies available at law or in equity against Manager and shall have the right to assume the Manager’s CAM obligations as they pertain to the Protesting Owner’s Parcel.

14. DEFAULT BY OWNER.

14.1 Right to Cure. Should any Owner or Occupant (collectively, a “**Defaulting Owner**”) (a) violate a use restriction or exclusive, and thereafter fails to cease such violation within five (5) business days after its receipt of a written demand therefor from the Manager or

any other Owner (the “**Curing Owner**”), or (b) fail to timely perform any of its obligations hereunder (excluding any claims related to the obligations of Manager, which are addressed in Section 13.12 above) or violates any term or condition of this Agreement and thereafter fails to commence to perform such obligation within fifteen (15) days after its receipt of a written demand therefor from a Curing Owner and thereafter use good faith and diligent efforts (but in no event longer than ninety (90) days subject to Force Majeure) to perform such obligation or cure such violation, the Curing Owner will, in addition to any other remedy provided at law, in equity (including injunction or specific performance), or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the Defaulting Owner, and the Defaulting Owner will reimburse the Curing Owner for the cost of performing such obligation within ten (10) days after receipt of billing therefor and proof of payment thereof.

In the event a Defaulting Owner does not reimburse the Curing Owner within such ten (10) days, the Curing Owner will have: (i) the right to exercise any and all rights which such Curing Owner might have at law or in equity to collect the same; and/or (ii) a lien on the Parcel(s) owned by the Defaulting Owner to the extent of the amount paid by the Curing Owner but not reimbursed by the Defaulting Owner, including attorneys’ fees and costs incurred by the Curing Owner in seeking to compel performance and pursue the lien, which total amount will bear interest at the Interest Rate from the date of billing until paid. Such lien may be filed or recorded by the Curing Owner as a claim against Declarant or the Defaulting Owner, in the form required by law, in the office wherein mortgages and liens are recorded, which lien shall contain at least the following information:

- (a) The name of the lien claimant;
- (b) The name of the Defaulting Owner;
- (c) A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
- (d) A description of the Parcel being liened.

The lien so claimed will attach from the date of recordation in the amount claimed by the Owner curing the default, and it may be enforced and foreclosed in any manner allowed by law including, but not limited to, suits to foreclose a mechanic’s lien, trust deed or mortgage under applicable law. Any Curing Owner filing such lien will concurrently notify the Defaulting Owner, as the case may be, of such filing, and will within sixty (60) days thereafter send to the Defaulting Owner at its notice address a copy of such lien showing such recording. Such lien, when so established against the Parcel described in such lien, will be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such Parcel after the time of recording the claim of lien.

Notwithstanding the above, the lien for any amount due by a Defaulting Owner to a Curing Owner will be subordinated to the lien of any bona fide security device, including but not limited to, mortgage, deed of trust and sale and leaseback obtained by an Owner of a Parcel for the purposes of the financing and improvement thereof (or a refinancing thereof); provided,

however, that the subordination related to a Parcel owned by a Defaulting Owner shall apply only to the amounts that have become due and payable prior to a sale or transfer of such Parcel pursuant to or in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve the Parcel from the lien for any assessments thereafter becoming due or from the lien of any subsequent Assessment.

14.2 Injunctive Relief. In the event of any violation or threatened violation of any provision of this Agreement, the Manager or any Owner shall have the right, in addition to any other remedies herein or by law or equity provided, to enjoin such violation or threatened violation.

14.3 Breach Shall Not Permit Termination. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

14.4 No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

15. NOTICES. Any notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Declarant: Daniel Schmidt
c/o WPI Enterprises, Inc.
5455 W. 1100 N., Suite 202
Highland, Utah 84003

with a copy to:

Hansen Black Anderson Ashcraft PLLC
Attn: Jonathan K. Hansen
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

Notices given hereunder shall be deemed to have been given on the date of personal delivery (or the first business day thereafter if delivered on a non-business day) or three (3) days after the date of certified mailing or the next business day after being sent by overnight courier, provided that the sender can evidence proof of receipt of such notice. Refusal to accept delivery shall be

deemed receipt of notice. If the sender is unable to provide such proof, notices given hereunder shall be effective upon actual receipt only. Any Owner may change its address for Notices upon ten (10) days' prior written notice to the other Owners delivered in the manner set forth above. Informal communications made between the Parties during the completion of construction activities performed under this Agreement may be made by their respective project managers as designated from time to time.

16. ATTORNEYS' FEES. In the event Declarant, Manager, or any Owner brings or commences legal proceedings to enforce any of the terms of this Agreement, the prevailing party in such action shall have the right to recover reasonable attorneys' and paralegal fees, discovery and investigative costs, and other costs from the other party, to be fixed by the court in the same action. The phrase "legal proceedings" shall include appeals from a lower court judgment, as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The phrase "prevailing party" as used in the context of Federal Bankruptcy Court shall mean the prevailing party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt party which are reasonably necessary to protect its rights under the terms of this Agreement. The phrase "prevailing party" as used in the context of any court other than the Federal Bankruptcy Court shall mean the party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which the party sought.

17. DURATION. Except as otherwise provided herein, this Agreement shall remain in full force and effect for a term of eighty (80) years from the date hereof. Notwithstanding the foregoing, Declarant shall have the right to extend the term of this Agreement for successive ten (10)-year periods upon written notice to the other Owners served prior to the expiration of the then current term, and recordation in the official records of a notice extending the term of this Agreement. Upon written request, all other Owners shall sign such and acknowledge such notice.

18. MODIFICATION. This Agreement (including, without limitation, the Site Plan) may only be amended or modified by a written document executed by Declarant and the Owners (not Occupants) of two-thirds (2/3) of the non-Declarant owned land comprising the Parcels, provided that such modification may not have a material adverse effect on any Owner without the prior written consent of Declarant and three (3) Owners. Notwithstanding anything to the contrary herein, if the City of Saratoga Springs or any other government authority with jurisdiction over such matters requires a modification then Declarant may effect such modification without the consent of any Owner. Any such amendment shall be binding on all Owners so long as the foregoing approval has been obtained, even if any specific Owner did not approve of or otherwise consent to the amendment or modification. A copy of any such amendment or modification of this Agreement shall be delivered to all Owners (including without limitation any Owners who did not consent to or approve of the amendment or modification) promptly following such amendment or modification being recorded in the Official Records of Utah County, Utah.

19. GENERAL PROVISIONS.

19.1 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for any public purposes whatsoever, it being the intention of Declarant that this Agreement shall be strictly limited to and for the purposes herein expressed.

19.2 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

19.3 Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

19.4 Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

19.5 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between the Parties. No term or provision of this Agreement is intended to be or shall be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such person, firm, organization, or corporation shall have any right or any cause of action hereunder.

19.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to any choice-of-laws or conflicts-of-laws principles that would apply the laws of any other state. All parties expressly consent to the personal jurisdiction of the state and federal courts of the State of Utah and service of process being affected upon them by registered mail sent to the addresses set forth in Section 15.

19.7 No Presumption. The parties executing this Agreement agree and acknowledge that the terms and conditions contained in this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against Declarant, any party or Owner by reason of the extent to which any party or Owner or their professional representatives or consultants participated in the preparation of this Agreement.

19.8 Inurement. This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner and their respective successors and assigns; provided (except as otherwise provided in Section 18 herein), if any Owner conveys any portion or all of its interest in any Parcel owned by it, such Owner will thereupon be released and discharged from any and all further obligations under this Agreement arising from and after the assignment date as it had in connection with the Parcels conveyed by it if a bona fide purchaser for value assumes in writing the conveying Owner's obligations under

this Agreement; and provided further, no such sale will release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

19.9 Estoppel Certificate. Each Owner and Manager agrees that, within thirty (30) days after a request by any other Owner (“**Requesting Owner**”), it will issue to a prospective lender of the Requesting Owner, or to a prospective purchaser of the Requesting Owner’s interest, an estoppel certificate stating:

(a) whether the Owner to whom the request has been directed knows of any default by the Requesting Owner under this Agreement, and, if there are known defaults, specifying the nature thereof;

(b) whether this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and

(c) that to the Owner’s knowledge this Agreement as of that date is in full force and effect.

Such statement will act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value and such party is without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; provided, no Owner will incur any liability whatsoever for any misstatement or wrong information unless the same is the result of the gross negligence or willful misconduct of the Owner furnishing such information.

19.10 Merchant’s Association. Declarant reserves the right to establish a merchant’s association if it obtains approval therefor from Owners (not Occupants) of two thirds (2/3) of the non-Declarant owned land comprising the Parcels. If a merchant’s association is formed, each Owner and Occupant agrees to become a member of, contribute to, or participate in the activities of (including advertising) the merchant’s association established for the Parcels.

19.11 Contractual Obligations. All of the terms and conditions contained herein represent contractual obligations of the Owners. The purchase of any Parcel by any governmental entity will be deemed a proprietary act with full authority granted therefor from any and all legislative body. The presentment of any claim or action against any Owner pursuant to this Agreement (such as through the indemnification provision) shall be presentment and tender of a contractual obligation. Under no condition shall any Owner be limited or restricted (including any waiver due to the passage of time except for the statute of limitation period set forth in Laws of the State of Utah) in its ability to tender any claim or matter to an Owner in accordance with the terms of this Agreement.

19.12 Force Majeure. Each Owner and Manager will comply with the time periods set forth in this Agreement to the extent such provisions are applicable to them; provided each and every period referred to in Section 2, Section 7 and Section 13 shall be extended for a period or periods of time equal to any period or periods of delay preventing the performance of any

Owner's or Manager's obligations, which delays are caused by fire or other casualty, acts of god, acts of nature, weather, refusal or failure of Governmental Authorities to grant necessary approvals or permits (the Manager or Owner responsible thereof agreeing to use reasonable diligence to procure the same), war, riot, or insurrections, or any other cause (except financial obligations) or any violation of a use restriction or exclusive as set forth in this Agreement) beyond the reasonable control of such Owner or Manager. In the event of any such delay, the Owner or Manager suffering such delay will seek and use to the extent available economically reasonable and comparable substitutes or alternatives and will promptly give written notice to the other Owners of the occurrence of such delay and, upon termination thereof, notice of the termination of such delay. In the event a Manager or Owner suffers such a delay and fails to give notice of the occurrence of and termination of such delay, as provided herein, the Manager or such Owner will be deemed to have waived its right to an extension hereunder on account of such delay.

19.13 Consent and Approvals. Except as otherwise specifically provided in this Agreement, whenever the consent or approval of an Owner, Declarant or Manager is requested or required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned, or delayed and any such consent or approval shall be in writing and signed by an authorized representative of the consenting Owner, Declarant or Manager. If it is determined that any Owner, Declarant or Manager failed to give its consent where it was required to do so under this Agreement, an Owner affected by such denial of consent will be entitled to injunctive or declaratory relief but will not be entitled to monetary damages or to terminate this Agreement for such failure. The review and/or approval by Declarant of any item or matter to be reviewed or approved by Declarant under the terms of this Agreement will not impose upon Declarant any liability for the accuracy or sufficiency of any such item or matter or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting the interest of Declarant and other Owners and no third parties will have any rights as a consequence thereof.

19.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Declarant and the Owners, Occupants, and their successors and assigns. In the event of a transfer or change of ownership of any parcel, the transferring Owner shall notify Declarant, Manager, and the other Owners of the change of ownership with the name and contact information for the succeeding Owner. Declarant shall have the right to designate any successor to Declarant's rights, obligations, and interests under this Agreement by recording a notice in the records of Utah County, Utah and by notifying the other Owners of the change with the name and contact information of the succeeding Declarant. The transfer or assignment of any interest in the Parcels shall not relieve the transferring or assigning person or entity of any duties, responsibilities, or obligations accruing before and through the transfer or assignment date.

19.15 Time of Essence. Time is of the essence of this Agreement and each and all of its provisions.

19.16 Computation of Time Periods. Unless otherwise specifically provided in this Agreement, all periods of time referred to herein shall include all Saturdays, Sundays, and state or national holidays; provided, however, that if the date or last date to perform any act or give

any notice or approval shall fall on a Saturday, Sunday, or state or national holiday, such act may be performed or such notice or approval given on the next succeeding business day.

19.17 Waiver. No failure or delay on the part of Declarant or any Owner in exercising any right granted to it under this Agreement, regardless of the length of time for which such failure or delay shall continue, will operate as a waiver or impair any such right. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach of condition. No waiver of any provision of this Agreement shall be valid unless given in writing and duly executed by the Owner to be charged therewith.

19.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to form one (1) document.

19.19 Entire Agreement. This Agreement, together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the Parties with respect to the subject matter set forth herein and supersedes all prior and contemporaneous agreements and understandings between the parties hereto with respect to such subject matter.

19.20 Exhibits. Exhibits A, A-1, B, B-1, C, D, and E attached hereto, are incorporated herein by this reference.

19.21 Consent by Mortgagees. Any mortgagees or beneficiaries under a deed of trust encumbering any Parcel as of the date of this Agreement or thereafter until this Agreement is recorded in Utah County shall and do hereby consent to the terms and conditions of this Agreement. Any mortgages or deeds of trust entered into after the date of this Agreement shall be subordinate to this Agreement.

19.22 Authority. Each entity executing this Agreement hereby represents and warrants that such entity is a duly formed and existing entity qualified to do business in Utah and that such entity has full right and authority to execute and deliver this Agreement and that each person signing on behalf of such entity is authorized to do so.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written by Declarant.

UTAH VALLEY TURF FARM LIMITED
PARTNERSHIP, an Arizona limited
partnership

By: THE WM. DOUGLAS HORNE FAMILY
REVOCABLE TRUST, DATED OCTOBER
16, 1992, a General Partner

By: Wm Douglas Horne
W. Douglas Horne, Authorized Trustee

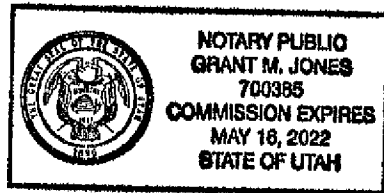
STATE OF UTAH §
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COUNTY OF UTAH §

BEFORE ME, a Notary Public in and for said County and State aforesaid, on this date personally appeared W. Douglas Horne, an Authorized Trustee of The Wm. Douglas Horne Family Revocable Trust, Dated October 16, 1992, a General Partner of Utah Valley Turf Farm Limited Partnership, known to me to be the same person whose name is subscribed to the foregoing instrument, and he acknowledged that he signed and delivered said instrument in the capacity indicated above, as his own free and voluntary act and as the free and voluntary act of the landlord therein for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 27th day of June, 2019.

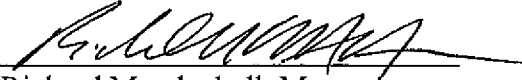
Grant M. Jones
Notary Public for the State of Utah

My Commission Expires: *May 16, 2022*



IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written by Declarant.

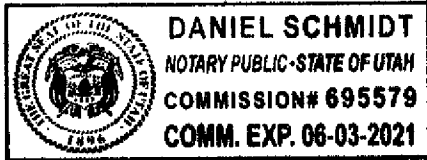
Westlake Partners, LLC,
a Utah limited liability company

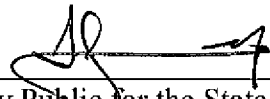
By: 
Richard Mendenhall, Manager

STATE OF UTAH §
 §
COUNTY OF UTAH §

BEFORE ME, a Notary Public in and for said County and State aforesaid, on this date personally appeared Richard Mendenhall, the Manager of Westlake Partners, LLC, known to me to be the same person whose name is subscribed to the foregoing instrument, and he acknowledged that he signed and delivered said instrument in the capacity indicated above, as his own free and voluntary act and as the free and voluntary act of the landlord therein for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 27th day of June, 2019.




Notary Public for the State of Utah

My Commission Expires: 6/3/21

Exhibit "A"
PARCELS LEGAL DESCRIPTION

A portion of the Northwest Quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Base & Meridian, located in Saratoga Springs, Utah, more particularly described as follows:

Beginning at a point on the East right-of-way line of West Commerce Drive as shown on Plat "A", *SARATOGA SPRINGS COMMERCIAL* subdivision according to the official plat thereof, said point being located N0°22'47"E along the Section Line 991.05 feet and East 1039.26 feet from the West 1/4 Corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base & Meridian; thence along said right-of-way the following three (3) courses: North 49.46 feet; thence N7°46'10"E 88.75 feet; thence North 87.53 feet; thence along the arc of a 26.00 foot radius curve to the right 41.12 feet through a central angle of 90°36'59" (chord: N45°18'29"E 36.97 feet); thence S89°23'01"E 924.31 feet; thence S85°28'01"E 246.32 feet; thence S89°28'12"E 38.77 feet; thence S0°09'38"W 247.31 feet; thence S42°14'56"W 28.88 feet; thence N47°45'04"W 15.06 feet; thence along the arc of a 123.00 foot radius curve to the left 90.11 feet through a central angle of 41°58'23" (chord: N68°44'15"W 88.11 feet); thence N89°43'27"W 1133.51 feet to the point of beginning.

Contains: ±7.02 Acres

Exhibit "A-1" SITE PLAN DEPICTION

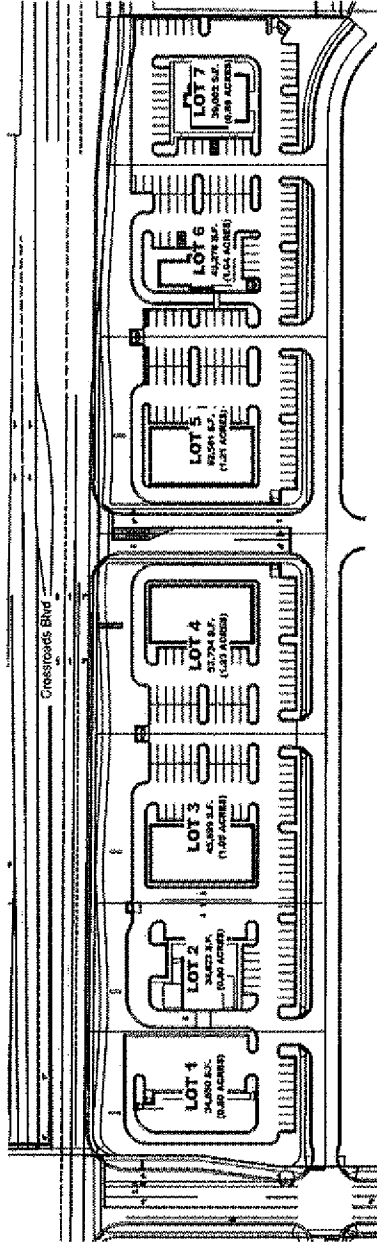


Exhibit "B"
RETAIL CENTER LEGAL DESCRIPTION

A portion of the Northwest Quarter of Section 14, Township 5 South, Range 1 West, Salt Lake Base & Meridian, located in Saratoga Springs, Utah, more particularly described as follows:

Beginning at a point located N89°48'52"E along the 1/4 Section Line 1045.83 feet from the West 1/4 Corner of Section 14, Township 5 South, Range 1 West, Salt Lake Base & Meridian (Basis of Bearing: N0°22'47"E along the section line between the West 1/4 and the Northwest Corner of Section 14); thence North 1037.09 feet; thence N7°46'11"E 88.76 feet; thence North 122.88 feet to the south line of Crossroads Boulevard; thence along said line the following three (3) courses: S89°23'31"E 816.49 feet; thence S85°28'01"E 380.84 feet; thence S89°28'12"E 38.77 feet to the west line of Plat "A", Gateway at Saratoga Springs Subdivision; thence along said subdivision the following three (3) courses: S0°09'38"W 247.31 feet; thence S66°38'54"E 74.77 feet; thence S89°22'39"E 254.95 feet to the west line of Redwood Road; thence along said west line the following three (3) courses: S0°30'32"W 483.35 feet; thence S1°24'07"W 300.11 feet; thence S0°22'43"W 140.69 feet to the quarter section line; thence S89°48'52"W along said line 1557.19 feet to the point of beginning.

Contains: ±42.06 Acres

Exhibit "B-1" RETAIL CENTER DEPICTION

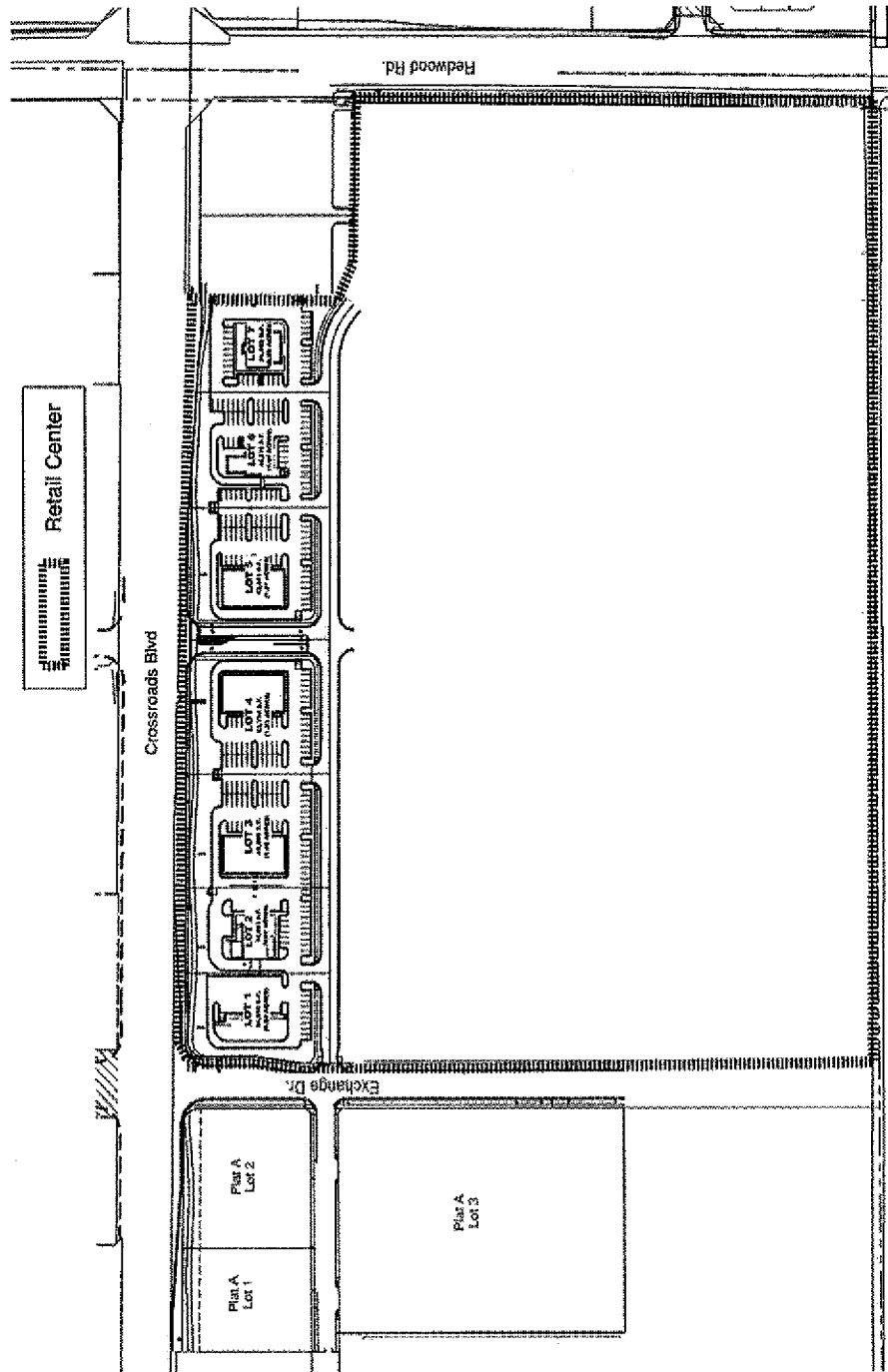


Exhibit "C" ROAD DEPICTION

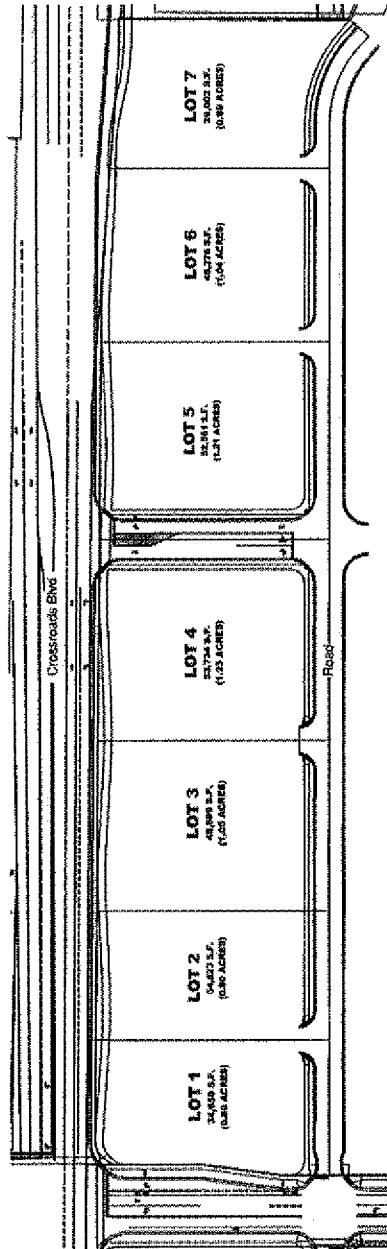


Exhibit "D" BUILDING PLAN

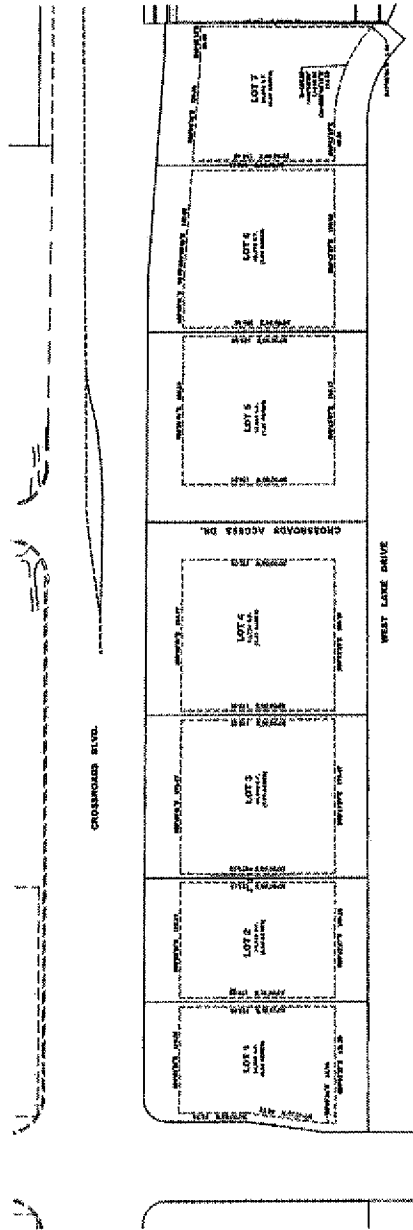


EXHIBIT "E"**SIGN CRITERIA****A. GENERAL**

1. All signs have to be maintained in first class standard.
2. Declarant shall have the right to require Owner to replace any signage in disrepair or damage, but no more than once every 5 years.
3. All temporary signage needs to be professionally installed, and up no longer than 30 days. After the expiration of 30 days, the temporary signage will need to be down for a minimum of 30 days.

B. CRITERIA

1. General Requirements Applicable to All Signs:
 - a. Owner shall be required to identify the Leased Premises by signs. All signs and identifying marks shall be within the limits of the Building Premises, or upon the perimeter fascia. Owner may choose color and letter style. All signs shall be illuminated and shall be of one of the types indicated hereafter.
 - b. The wording of sign shall be Trade name or d/b/a of the business occupying any building.
 - c. Size and placement of Signs shall be subject to city approval.
 - d. The use of corporate crests, shields, insignia, or other decorative elements shall be permitted.
 - f. All wiring, ballasts, and transformers shall be enclosed behind the existing fascia or within sign cabinet and shall under no circumstances be exposed.
 - g. No signs with flashing, blinking, noise-making, or moving elements shall be permitted. Signs with vacuum formed faces or letters and box or cabinet type signs with florescent lighting shall be prohibited.
 - h. Temporary signs, banners, or promotional material shall not be placed on the exterior of the building or the lot, or upon the building site unless specifically approved by Declarant. Temporary signs, banners, or promotional material must be professionally installed.

2. Pan-Channel or Channelume Type Signage Requirements:
 - a. The height of sign letters or components shall not exceed city size limits.
 - b. Signs shall not project beyond the face of the fascia more than six (6) inches.
 - c. All letters shall be illuminated with neon or argon tubes or LED lighting and shall have translucent or transparent plexiglass or lexan faces with minimum 3/16" thickness covering the light source. Transparent faces may be utilized at Owner's option. Backs shall be solid to prevent haloing.
 - d. Channelume type signs shall be installed over a metal laminated back piece.
 - e. Color of plastic faces, silvotrim, and channel return shall be at Owner's option.
 - f. No exposed cross-overs, conductors, or conduits between letters shall be permitted. Letters shall be flush mounted using non-corrosive fasteners. Signs shall be mounted directly to fascias and shall not have exposed raceways.
 - g. No box signs.

C. SIGNS WITHIN STORES AND AT STOREFRONTS

1. Signs and signage within the store shall be as selected by Owner and professionally created and installed.
2. Owner shall be permitted to place signage in storefront windows behind the glass including exposed neon/LED only if such sign areas are of a permanent nature and are professionally painted or attached. No moving or flashing elements shall be permitted. Maximum size shall not exceed five percent (5%) of the glass area or individual pane to or behind which the signage is placed.
3. Temporary signage and posters advertising sales or other promotional events shall be permitted within storefront windows so long as such signs are professionally prepared and remain in the window for no more than two (2) consecutive weeks.
4. Painted or Vinyl letters on windows or doors indicating address, operating hours, or otherwise identifying customer or service entrances shall be permitted provided such letters are no larger than 4" in height.