

When Recorded, Mail To:
Bingham Park, L.C.
1132 South 500 West
Salt Lake City, Utah 84101
Attention: Steven M. Perry

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06/27/2000 02:34 PM 52.00
Book - 8371 Pg - 1663-1679
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
BINGHAM PARK LC
ATTN STEVEN M PERRY
1132 S 500 W
SLC UT 84101
BY: KCC, DEPUTY - WI 17 P.

7668499

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BINGHAM BUSINESS PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BINGHAM BUSINESS PARK (this "Declaration") is made this 26 day of June 2000 by Bingham Park, L.C., a Utah limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

Whereas, Declarant is the fee simple owner of certain real property commonly known and identified as all of Lots 1 through 10, inclusive, and Lot 19 of Bingham Business Park (hereinafter referred to as the "Property") located in the City of West Jordan, Salt Lake County, Utah as subdivided by a plat which was recorded on April 14, 1999 as Entry No. 7322350 (the "Plat"), in the office of the Recorder of Salt Lake County, Utah (hereinafter defined as the "Property");

Whereas, Declarant intends itself to own and develop portions of the Property and/or to convey portions of the Property to other persons or entities for development, all in accordance with certain covenants, conditions and restrictions as are contained in this Declaration (together the "Protective Covenants") pertaining to the ownership and development of the Property; and

Whereas, Declarant is desirous of subjecting the Property to the Protective Covenants hereinafter set forth, each and all of which is and are for the benefit of said Property and for Declarant and each subsequent Owner and Occupant of any portion of the Property.

Now, therefore, Declarant does hereby proclaim, publish and declare that the Property shall be held, transferred, sold, conveyed, hypothecated, leased, subleased, occupied and improved subject to the Protective Covenants hereinafter set forth, the terms of which shall run with the land and be binding upon Declarant and upon all parties having or acquiring any right, title or interest in and to any part of the Property, and shall inure to the benefit of each other Owner or Occupant of all or any part of the Property.

**ARTICLE I
DEFINITIONS**

1.1 Definitions. When used in this Declaration, each of the following terms shall have the meaning indicated.

(a) "Architectural Committee" shall mean the architectural committee appointed pursuant to the provisions of Article III of this Declaration. The Architectural Committee shall have the responsibilities and authority with respect to the interpretation and enforcement of this Declaration as set forth herein.

(b) "Building" shall mean and include, but not be limited to, any structure built for permanent and/or temporary use on a Building Site, and all projections or extensions thereof, including but not limited to garages, outside platforms and docks, storage tanks, carports, canopies, enclosed malls and porches, sheds, tents, mailboxes, radio or TV antenna, satellite dishes, fences, signboards or any other temporary or permanent improvement to such Building Site.

(c) "Building Site" shall mean a tract of real property within the Property. If fee simple title to two (2) or more adjacent Building Sites, as defined hereinabove, is acquired by the same Owner, such commonly owned Building Sites may, at the option of said Owner, be combined and treated as a single Building Site for the purposes of this Declaration, provided that the location of the Improvements on such combined Building Site shall be subject to the prior written approval of the Architectural Committee.

(d) "Declarant" shall mean Bingham Park, L.C., a Utah limited liability company, or its successors or assigns.

(e) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Bingham Business Park, together with all of the provisions contained herein, which shall be recorded in the office of the Recorder of Salt Lake County, Utah, as the same may from time to time be supplemented or amended in the manner described herein.

(f) "Deed" shall mean any deed, assignment, lease or other instrument conveying fee title or a leasehold interest in any part of the Property.

(g) "Improvements" shall mean and include, but not be limited to, Buildings, outbuildings, driveways, exterior lighting, fences, Landscaping, Lawns, loading areas, parking areas, railroad trackage, retaining walls, roads, screening walls, Signs, utilities, and walkways located on a Building Site.

(h) "Landscaping" shall mean a space of ground covered with Lawn and/or ground cover, and/or tree bark or decorative wood chips, combined with shrubbery, trees plants and/or flowers, which may be complemented with sprinkling systems, earth berms, masonry or similar materials.

(i) "Lawn" shall mean a space of ground covered with grass.

(j) "Occupant" shall mean a person or entity, including but not limited to a corporation, joint venture, partnership, trust, limited liability company, unincorporated organization or association that, through receipt of a Deed or otherwise, has purchased, leased, rented or has otherwise legally acquired the right to occupy and use any Building, Building Site or any portions of any Building or Building Site, whether or not such right is exercised.

(k) "Owner" shall mean a person or entity, including but not limited to a corporation, joint venture, partnership, trust, limited liability company, unincorporated organization or association that is the record owner of any fee simple estate, or that has an equity of redemption, in all or any portion of a Building Site;

(l) "Property" shall mean all of Lots 1 through 10, inclusive, and Lot 19 of Bingham Business Park, located in the City of West Jordan, Salt Lake County, Utah, as subdivided by the Plat which was recorded on April 14, 1999 as Entry Number 7322350 in the office of the Recorder Salt Lake County, Utah, and any other Lots within Bingham Business Park that may be subjected to this Declaration by a Supplemental Declaration executed and recorded by Declarant or by the then owner of the property within Bingham Business Park that is subjected to this Declaration.

(m) "Protective Covenants" shall have the meaning as set forth in the second Whereas clause of this Declaration.

(n) "Sign" shall mean and include every advertising message, announcement, declaration, demonstration, display, illustration, insignia, surface or space erected or maintained in view of the observer thereof for the identification, advertisement or promotion of the interests of any person, entity, product or service or for the purpose of providing directions or other information to the observer thereof. The term "Sign" shall also include the sign structure, supports, lighting systems and any attachments, ornaments or other features used to draw the attention of observers. This definition does not include any flag, badge, or ensign of any government or governmental agency erected for and used to identify said government or governmental agency.

(o) "Street" shall mean any public street or highway, whether presently constructed and dedicated by plat map or contemplated in the future, under a street plan approved by any public authority.

**ARTICLE II
PURPOSES OF DECLARATION;
MUTUALITY OF BENEFITS AND OBLIGATIONS**

Section 2.1 Purposes. The purposes of this Declaration are:

(a) to insure proper use and appropriate, adequate and reasonable development of the Property and each Building Site located thereon;

(b) to preserve and enhance the value to each Owner and Occupant of all Buildings and Building Sites;

(c) to protect against the erection of Improvements constructed of material deemed undesirable or unsuitable by Declarant or by the Architectural Committee;

(d) to encourage the construction and maintenance of attractive, permanent Improvements that are compatible and harmonious as to appearance, function and location with Improvements situated on or planned for other Building Sites;

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(e) to assure adequate off-street parking space and off-street truck loading and maneuvering facilities on the Property; and

(f) in general to provide for the orderly, aesthetic and high quality architectural and engineering development, improvement and design of the Property and each Building thereon that will promote the general welfare of the then current and future Owners and Occupants.

Section 2.2 Mutuality. The Protective Covenants set forth herein are made for the mutual benefit of each and every Owner and are intended to create reciprocal rights and obligations between the respective Owners and future Owners of all or any portion of the Property; and to create a privity of contract and estate between the grantees of said properties, their heirs, successors and assigns. All Deeds, and any Buildings located on any portion of the Property, shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms, conditions and provisions contained in this Declaration. Every person who is or becomes an Owner of any portion of the Property does by reason of taking such title, by Deed or otherwise, agree to all of the terms, conditions and provisions of this Declaration.

ARTICLE III ARCHITECTURAL COMMITTEE

Section 3.1 Introduction. It is the intention and purpose of this Declaration to impose architectural design standards of a type and nature that results in Improvements which are compatible with the purposes of this Declaration set forth in Article II hereof. The placement, massing, dimensions, materials, and public aspects of the Improvements will be guided, but still allow for diversity in style and vitality in design. To accomplish this goal, the Declarant hereby establishes the Architectural Committee, which is empowered to oversee and enforce the provisions of this Declaration.

Section 3.2 Architectural Committee Created. The Architectural Committee will consist of three members. The initial Architectural Committee will consist of three people appointed by the Declarant, who do not need to be Owners. At the time 70% of the Building Sites are sold to persons other than the Declarant, one member of the Architectural Committee will be elected by the Building Site Owners to replace an appointment of the Declarant. At the time that 100% of the Building Sites are sold to persons other than the Declarant, a second member of the Architectural Committee will be elected by the Building Site Owners. On the date which the last is to occur of (a) the tenth anniversary of the recording of the Plat and (b) the date on which 100% of the Building Sites are sold to persons other than the Declarant, all three members of the Architectural Committee will be elected by the Building Site Owners. The above percentages are to be based on the total number of Building Sites within the Property so that the Declarant is able to remain active in the administration and enforcement of this Declaration while Building Sites are being marketed. The Declarant may elect at any time to waive the right to appoint members to the Architectural Committee and thereby allow all of the members of the Architectural Committee to be elected by the Building Site Owners.

Section 3.3 Approval by Architectural Committee. No Improvements of any kind, including without limitation the construction or installation of any Buildings, Landscaping, parking area, driveway, walkway, or other hard surfaced area, fences, walls, curbs, poles, satellite dishes or

antenna, solar panels, utility lines or any other permanent structure may be constructed, installed, maintained or allowed to stand in the Property without the prior written approval of the Architectural Committee. Unless otherwise specifically provided in this Declaration, all decisions made by the Architectural Committee shall require the vote of a majority of the members of the Architectural Committee, rather than the unanimous vote of the members of the Architectural Committee. No excavation, fill, grading, filling, draining, Landscaping, or installation or removal of existing vegetation shall be made without the prior written approval of the Architectural Committee. Approval of the Architectural Committee will be sought in the following manner:

(a) *Plans submitted.* A complete set of plans for the construction of any Improvement as described in Section 3.3 must be signed by the applicant and submitted to the Architectural Committee for review. It is recommended that preliminary plans be submitted before the expense of final construction drawings is incurred. The plans must be in sufficient detail to show the location of the Building Site of the Improvements, including without limitation the exterior walls of any Building and all other structures to be built with it; detailed drawings of all elevations of all Buildings showing locations of windows, doors, roof pitches and other exterior elements; a list of exterior materials and roofing materials and/or a sample, including color samples; and a Landscaping plan showing the location of driveways, walkways, parking lots and other hard surfaced or irrigated areas and the areas to be disturbed by construction and the means of restoring those areas. In the case of an addition or modification to an existing Building, the Architectural Committee may waive any of the foregoing requirements.

(b) *Review Fee.* The applicant will pay a review fee to the Architectural Committee of \$500 or, in the case of Improvements which cost less than \$5,000 or which make no structural changes, the applicant will pay a fee of \$100. The primary purpose of the fee is to cover the cost and expense of reviewing the plans and giving notice of meetings.

(c) *Review.* The Architectural Committee shall exercise its best judgment in overseeing the construction of all Improvements within the Property. The Architectural Committee shall consider the materials to be used on the external features of all Improvements, including but not limited to exterior colors, harmony of external design with existing structures within the Property, location with respect to topography and finished grade elevations and harmony of Landscaping with the surroundings. While in receipt of a complete submission of the plans, the Architectural Committee will review the plans and make an initial determination whether or not the plans comply with the conditions specifically mentioned in this paragraph together with all other conditions imposed by this Declaration. If in the judgment of the Architectural Committee the plans do not comply with the conditions imposed by this Declaration, the plans will be rejected. If the plans are in compliance with the conditions imposed by this Declaration, the Architectural Committee will approve the plans. The Architectural Committee may approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans to the Architectural Committee for informal and preliminary approval or disapproval. The Architectural Committee will review preliminary plans, without requiring the payment of a review fee, the Architectural Committee will make its comments known to the Owner. However, no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission of plans as set forth in this Declaration. All preliminary sketches will be kept by the Architectural Committee. Upon final approval, the Architectural Committee and the Owner will each sign a copy of the approved plans, which shall be left with the Architectural Committee.

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Any construction that is not in strict compliance with the approved plans is prohibited. Notwithstanding any provisions in the Declaration, all construction of any nature upon any of the Building Sites within the Property shall be performed in compliance with the requirements of the land management code and the building and zoning ordinances of all governmental entities having jurisdiction with respect to the Property.

(d) *Written Record.* The Architectural Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years.

(e) *Failure to Act.* If the Architectural Committee has not approved or rejected any submission within 45 days after payment of the review fee and submission of complete plans, the submission shall be deemed to have been disapproved.

(f) *Permits and Approvals from the City of West Jordan.* Notwithstanding any other provision of this Declaration to the contrary, prior to commencing the construction of any Improvements on any Building Site, the Owner of each Building Site must obtain from the City of West Jordan all necessary permits and approvals required by the City of West Jordan in connection with the construction of any such Improvements.

Section 3.4 Variances. The Architectural Committee has the authority to deviate from the requirements contained in this Declaration under extenuating circumstances, when compliance with this Declaration would create an unreasonable hardship or burden for a Building Site Owner. No such variance may be granted without the unanimous written consent of the Architectural Committee. The Architectural Committee does not, however, have the authority to deviate beyond the requirements of the land management code and the building code and zoning ordinances of all governmental entities having jurisdiction with respect to the Property.

Section 3.5 Extraordinary Costs. Whenever it deems appropriate, the Architectural Committee shall engage the services of an architect, building/construction specialist, landscape specialist or civil or structural engineer to assist in its review of any proposed Improvements. All costs of such review will be paid by the applicant, provided however that no architect, engineer or other specialist will be hired without advance notice to the applicant of : (a) the intention to hire a review architect, engineer or other specialist, (b) the aspects of the proposal that caused the Architectural Committee to believe that professional review was required and (c) the estimated cost of that review. If the applicant does not withdraw the proposal within five days after receipt of such notice, the applicant shall be deemed to have consented to the Architectural Committee retaining such professional assistance. Whenever the Architectural Committee retains outside professional services in its review, the reviewing architect, engineer or other specialist is acting only in an advisory capacity, and the applicant, for himself and his successors and assigns, waives any and all claims against the Architectural Committee in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary or inappropriate to the circumstances. The costs of such review will be billed directly to the applicant. In connection with any such review by an architect, engineer or other specialist, the Architectural Committee may require that the applicant deposit with the Architectural Committee a cash deposit equal to the estimated cost of such review prior to the time that the Architectural Committee engages the services of such architect, engineer or other specialist, which cash deposit shall be held by the Architectural

Committee to secure the obligation of the applicant to pay all costs of such review, and the Architectural Committee shall be entitled to apply such cash deposit toward the cost of such review.

Section 3.6 General Design Review. The Architectural Committee will use its best efforts to provide a consistent pattern of enforcement and consistent application of this Declaration.

Section 3.7 Declarant and Architectural Committee Not Liable. The Declarant and the Architectural Committee and its members shall not be liable to the applicant or to the Owners or Occupants of any Building Site within the Property for damages or any other remedy as the result of their actions, inactions, or approval or disapproval of any set of plans submitted to the Architectural Committee for review. In the absence of bad faith or malicious actions, the Owners and Occupants shall have no claim against the Declarant, the Architectural Committee or its members as a result of the performance or failure to perform the duties created by this Declaration. Any person or persons acquiring title to, or the right to use or occupy any Building Site in the Property shall be deemed to have agreed and covenanted that such Owner or Occupant will not bring any action or suit to recover damages against the Declarant, the Architectural Committee or its members, or the advisors, officers, employees or agents of any of the foregoing, as a result of the performance by the Architectural Committee of its duties and responsibilities under this Declaration. Each Owner and Occupant has the right to enforce this Declaration against another Owner or Occupant and may seek independent redress other than damages, if he believes the Architectural Committee has acted improperly.

Section 3.8 Limitations on Review. The Architectural Committee's review is limited to those matters expressly described in this Declaration. The Architectural Committee shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of the Property and shall have no liability to any Owner or Occupant whose plans were approved in a manner that included any such violation. The Architectural Committee shall not be responsible for reviewing, nor shall the approval by the Architectural committee of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or compliance with any applicable building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of the Property. The structural integrity of any Improvements constructed within the Property shall not be the responsibility of the Architectural Committee. Corrections or changes to plans as may be subsequently required to bring plans into conformity with any applicable statutes, laws or ordinances must be reviewed and approved by the Architectural Committee prior to construction of any Improvements.

Section 3.9 Approval to Proceed. The Architectural Committee shall promptly issue a certificate of approval to the applicant once the plans for any Improvements have been approved.

Section 3.10 Completion Required Before Occupancy. No Building within the Property shall be occupied until the Owner or Occupant of any Building shall have completed the Building in accordance with all plans approved by the Architectural Committee and until the Owner or Occupant shall have obtained all necessary governmental approvals and a certificate of occupancy from the governmental authority having jurisdiction with respect to the construction of the Building.

**ARTICLE IV
LAND USE**

The Building Sites shall be used exclusively for high quality industrial, commercial, office, distribution, warehouse and/or retail purposes and such other commercial purposes which are allowed by applicable zoning regulations and approved in advance by the Architectural Committee. The foregoing limitation shall not prevent the Owner or Occupant of any Building Site from constructing, owning, operating, leasing or conveying real property within the Property for service facilities approved by the Architectural Committee which are consistent with the purposes of this Declaration.

**ARTICLE V
GENERAL RESTRICTIONS, COVENANTS AND REQUIREMENTS**

The following restrictions, covenants and requirements are imposed on the Property, and on all Buildings, Improvements and Building Sites located thereon, and are binding on all Owners and Occupants, and may be enforced against such Owners and Occupants, jointly and/or severally:

Section 5.1 Use. Each Building and Building Site shall be used for high quality industrial, commercial, office, distribution, warehouse and/or retail purposes, and such other commercial purposes which are allowed by applicable zoning regulations and approved in advance by the Architectural Committee and for service facilities approved by the Architectural Committee which are consistent with the purposes of this Declaration. In so using the Building and Building Site, the Owner or Occupant, as the case may be, shall at all times comply with all present and future safety, health, environmental or other laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments, departments, commissions, boards and officers, and all orders, rules and regulations of the National Board of Fire Underwriters or any other body exercising similar functions, which may be applicable to the Building and Building Site. Each Owner and Occupant, as the case may be, shall (a) comply with all federal, state and local statutes, rules and regulations governing substances or materials identified as toxic, hazardous or otherwise damaging to person or property by reason of its chemical nature (the "Environmental Laws") and (b) promptly notify the Architectural Committee and any affected Owner or Occupant in the event of any discharge, spillage, uncontrolled loss, seepage, release or filtration of oil or petroleum or chemical liquids or solids, particles, liquids or gaseous products, hazardous waste or any product or byproduct of such Owner's or Occupant's operations that may constitute an environmental hazard upon, on or under the Property, any Building or any Building Site or any other matter relating to the Environmental Laws as they may affect the Property.

Section 5.2 Location and Size of Buildings.

(a) **Setback From Front Lot Lines.** Each Buildings shall be set back at least 15 feet from the front lot line of the Building Site. A Building wall which is set back a distance of at least 15 feet and not more than 30 feet from the front lot line shall not exceed 22 feet in height measured from the base of the wall to the top of the wall. Walls which are set back from the front lot line a distance greater than 30 feet shall not exceed 28 feet in height, measured from the base of the wall to the top of the wall.

(b) Setback From Side and Rear Lot Lines. Each Building may be located next to the side lot line or the rear lot line. If a Building wall is located within 12 feet of the side lot line or the rear lot line, such wall shall not exceed 22 feet in height, measured from the base of the wall to the top of the wall. The height of a wall set back a distance greater than 12 feet from either the side lot line or the rear lot line shall not exceed a height of 28 feet, measured from the base of the wall to the top of the wall.

(c) Underground Improvements. Underground Improvements such as storage tanks, may be placed within those portions of setback areas which are not included in the 15 foot landscaped area identified in Section 5.18.

(d) Limitation on Size of Buildings. The portion of any Building Site which may be covered by a Building shall not exceed 40% of the gross square footage of Building Site.

Section 5.3 Exterior Construction, Materials and Colors. All exterior walls of any Building or other Improvement must be finished with painted architectural masonry units, precast concrete, tilt up concrete or glass materials, or their equivalent, along with such other architecturally and aesthetically suitable building materials as shall be approved in writing by the Architectural Committee. Accents may include tile, glass or other accents approved by the Architectural Committee. Colors shall be harmonious and compatible with colors of the natural surroundings and adjacent Buildings. Notwithstanding the foregoing, no pre-formed or prefabricated structures shall be placed or constructed on any Building Site. No plastic structures or inflated structures shall be allowed on any Building Site. No earthen structure shall be placed or constructed on any Building Site. No unfinished concrete or masonry exterior finishes are allowable. Pre-formed metal panels not to exceed 10% of the exterior surface area on any wall are allowable. No stucco finish over wood framing shall be allowed on the exterior of any Building. No log buildings shall be allowed on any Building Site. Opaque or spandrel glass panels are allowable as an exterior finish on Buildings. However, no more than 50% of the total surface area of any wall shall contain see-through glass.

Section 5.4 Temporary Structures. No temporary Buildings or other temporary structures shall be permitted on any Building Site; provided, however, trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. The location and nature of such structures must be submitted to and approved by Architectural Committee and shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Building Sites, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building(s) in conjunction with which the temporary structure was used.

Section 5.5 Antennas, Aerials and Dishes. No exterior radio, television or microwave antenna, aerial, dish or similar facility of any kind shall be erected or maintained on any Building or Building Site without the prior approval of the Architectural Committee.

Section 5.6 Auxiliary Structures. Water towers, storage tanks, processing equipment, skylights, cooling towers, communication towers, vents and any other similar structures or equipment placed upon any Building Site shall be adequately screened from public view and from

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the view of other Building Sites by a screening method approved in writing by the Architectural Committee prior to the construction or erection of said structures or equipment.

Section 5.7 Utilities; Mechanical Equipment; Roof Projections.

(a) All utility lines, including electrical, shall be underground. Pad mounted transformers, switch gear and similar equipment that must be installed above ground level shall be screened with suitable Landscaping consistent with safety and other regulations of the relevant utility companies. Utility service lines (including, but not limited to, gas, water, sewer, and electricity) shall be connected at points approved in writing by the Architectural Committee.

(b) All mechanical equipment shall be located or screened so as not to be visible when viewed from the streets by the general public, shall be aesthetically incorporated into the architectural design of the Building and shall be constructed of materials compatible with those of the Building.

(c) No structure or appurtenance, including but not limited to water towers, standpipes, penthouses, elevators, elevator equipment, stairways, ventilating fans or similar equipment required to operate and maintain a Building, fire or parapet walls, skylights, tanks, cooling or other towers or flagpoles shall exceed a height of ten (10) feet above the finished rooftop of any Building, except as may be specifically approved in writing by the Architectural Committee.

Section 5.8 Loading and Servicing Areas. Loading doors, docks, material hauling facilities, accessory structures and servicing areas shall be adequately screened with Landscaping to minimize the effect of their appearance from public areas or neighboring sites. Moreover, loading and servicing areas shall be designed as an integral part of the Building architecture, so that the entire loading and servicing operation can be conducted within the confines of any such area. Loading areas shall not encroach into setback areas along street frontages. Off street loading space shall be designed to include an additional area or means of ingress and egress which shall be adequate for maneuvering.

Section 5.9 Garbage and Debris. No refuse, garbage, trash, grass, shrub or tree clippings, plant waste, compost, bulk materials or debris of any kind shall be kept, stored or allowed to accumulate on any Building Site except within an enclosed structure or container approved by the Architectural Committee or unless appropriately screened from view, in a manner acceptable to the Architectural Committee, except that any refuse or storage container containing such materials and approved by the Architectural Committee may be placed outside at such time as may be reasonably necessary to permit garbage or trash pickup or materials storage. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the type and appearance of permitted trash receptacles, the screening thereof by fences or otherwise, and the manner of storing and using the trash receptacles on the Property. All trash receptacles or dumpsters shall be located either (a) within the portion of the Building Site which is screened or fenced with materials approved by the Architectural Committee, or (b) within an enclosure having an exterior finish made of the same building materials used for the exterior of the Building, as approved by the Architectural Committee. Any such enclosure for a trash receptacle or dumpster must have a swinging metal gate or a swinging chain link gate with colored vinyl slats.

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Section 5.10 Parking and Parking Areas. No parking shall be permitted on any street or drive, or any place other than parking areas located upon Building Sites. Each Owner and Occupant shall be responsible for compliance by its employees and visitors of such rule. All yard parking visible from public roads shall be visually screened by the use of compatible approved fencing as determined by the Architectural Committee. All driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials. Common driveways serving more than one (1) Building Site are allowable. Notwithstanding the foregoing statements, yard areas located behind screened fences which are approved by the Architectural Committee may be finished with gravel or slag surfaces instead of asphalt or concrete surfaces.

Section 5.11 Accumulation of Materials; Storage Areas. No materials, supplies, merchandise, equipment, company-owned vehicles or similar items shall be stored except in an enclosed, covered Building or on a Building Site in a location which shall have been adequately screened from the view of adjacent Buildings, public streets and pedestrian walkways by either a fence, wall, landscaping screen or similar manner, but only if approved in writing by the Architectural Committee. Fuel and other storage tanks shall be installed underground wherever practicable and in any event screened from public view, provided that the construction, installation, operation, maintenance, repair, cleaning and removal of any such tanks shall be performed in strict compliance with all applicable governmental rules and regulations at the sole cost and expense of the Owner or Occupant of the Building Site on which such fuel or other storage tanks are installed. Awnings of any type, including without limitation awnings covering parking areas, must be approved by the Architectural Committee.

Section 5.12 Utilities. Other than for street lighting, all pipes, lines and other facilities for utilities, including water, gas, sewer and drainage, and all lines and conduits of any type hereafter installed for the transmission of audio and visual signals or electricity shall be located beneath the ground or within an enclosed structure, except that certain overhead lighting and utility appurtenances may be located above ground if they are adequately screened by Landscaping so as not to be visible from adjacent Buildings, public streets and pedestrian walkways.

Section 5.13 Maintenance of Property. Each Owner or Occupant shall at his or its own expense keep each Building Site owned or occupied by him or it, and all Improvements located thereon, in a clean, safe, attractive and aesthetically pleasing condition, in good order and repair, including without limitation, (a) painting and repairing and generally maintaining the exterior of all Buildings and other Improvements at such times as necessary to maintain the appearance of a first class industrial/business park facility, (b) maintaining (including snow removal) and repairing any parking lot, road, driveway, or similar Improvement located within the perimeter of all such Building Sites in a manner and with such frequency as is consistent with good property management, and (c) maintaining all Lawns, trees, grass, shrubs, flowers and other Landscaping in accordance with the requirements of Section 5.19 hereof. The expense of any maintenance, repairs or Landscaping required in this Section shall be the sole expense of each individual Owner or Occupant. Neither Declarant nor the Architectural Committee shall be responsible for any expense related to any maintenance, repair, landscaping or improvement on any Building Site.

Section 5.14 Noxious or Offensive Activity. No noxious or offensive activity shall be carried on or upon any Building Site, nor shall anything be done or placed thereon which is or may

become a nuisance or cause an unreasonable disturbance, unsightliness or annoyance to others or which constitutes a trespass against any adjoining Building or Building Site, its Owners, Occupants or subtenants. No excessive emission of fumes, odors, vibration, gasses, radiation, dust, liquid, wastes, smoke or noise shall be emitted from any Building Site.

Section 5.15 Annoying Sounds or Odors. No sound or odor shall be emitted from any Building Site that is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than devices used exclusively for security, fire prevention or fire control purposes, shall be located or used on any Building Site.

Section 5.16 Maintenance of Drainage. Each Building Site shall have appropriate provision for water retainage as may be necessary or appropriate for the Property's overall drainage system, as determined by the City of West Jordan. The established drainage pattern over any Building Site may not be altered except as approved in writing by the City of West Jordan.

Section 5.17 Curb Cuts. Curb cuts for driveways shall be a minimum of eight (8) feet from adjacent property lines, except for any driveway which is shared by adjacent Owners.

Section 5.18 Landscaping. Each Building Site shall consist of Landscaping for a minimum of fifteen (15) feet inside the property boundary line along street frontages, which shall constitute one-half (½) of the thirty (30) foot-required street setback. The remainder of the required thirty (30) foot street setback may be used for parking. Every Building Site shall be landscaped in accordance with plans submitted and approved in writing by the Architectural Committee. Landscaping prior to construction may be of such minimal nature as to provide ground cover and control weeds. Landscaping shall be installed within ninety (90) days after completion of Building construction or as soon thereafter as weather will permit and shall be maintained in the manner as outlined below in Section 5.19.

Section 5.19 Maintenance. Any Lawn and all Landscaping shall be properly maintained by Owners and Occupants of the Building or Building Site in a manner and with such frequency as is consistent with good property management and in compliance with such rules and standards as may be adopted and/or amended from time to time by the Architectural Committee.

Section 5.20 Exterior Lighting. All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained in accordance with plans and specifications approved in writing by the Architectural Committee to the end that lighting shall be compatible and harmonious throughout the Property. All light poles shall be of "shoe box" style and shall be 20 feet tall, having concrete bases. The light bulbs in the lighting fixtures located on the light poles shall be 150 watts, and the color of the light bulbs shall be identical to the color of the light bulbs used in the city right-of-way. Wall pack lights located on the exterior of Buildings shall use light bulbs of a color identical to the light bulbs used in the city right-of-way.

Section 5.21 Fences. Fences along street frontages shall be erected behind the 15 foot landscaped area required in Section 5.18. Fences may be located on the property line, provided that there are at least 15 feet of landscaping between the fence and the street frontage at the front property line. Notwithstanding any other provision in this Declaration to the contrary, with respect

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to the front portion of any building that faces a street, no fence shall be constructed closer to the street than the front of the building that faces such street and the imaginary line of the front of such building extended laterally on each side of the building. Fencing which does not front on a street may consist of fencing materials as approved by the Architectural Committee. Fencing of any portion of a Building Site which fronts on a street shall consist of fencing materials as approved by the Architectural Committee.

Section 5.22 Signs. All Signs must be approved in writing by the Architectural Committee and must conform to the following standards in addition to any sign regulations adopted by the City of West Jordan.

(1) With respect to Signs on any Building or on a Building Site, only the following Signs are allowed:

- (a) public necessity Signs identifying danger or hazard on or near the premises;
- (b) Signs offering the property for sale or lease;
- (c) on-premises business Signs directing attention to a use, product, or service conducted on the premises on which it is located; and
- (d) service Signs giving information to the public such as directions to parking facilities.

(2) In addition to Signs prohibited by the City of West Jordan sign regulations, the following Signs are specifically prohibited:

- (a) off premises business Signs advertising products or services not provided on the premises; and
- (b) roof Signs erected partially or wholly on or over the roof of a Building.

(3) A front yard setback of fifteen (15) feet and a side yard setback of at least fifteen (15) feet is required for all Signs.

(4) Maximum height of ground Signs supported by a fixed, permanent frame or support in the ground shall be four (4) feet above the adjacent finish ground elevation. Such monument sign shall not be built of wood but shall be constructed of steel, plastic, masonry, stone or other materials approved by the Architectural Committee.

(5) Business Signs shall be limited to one or more Signs not exceeding one (1) square foot for each two (2) linear feet of frontage occupied by Owner or Occupant, but in no case shall the total area of all business signs associated with one Building exceed one hundred seventy (170) square feet.

(6) Where Buildings are owned or occupied by more than one business entity in the same Building, business Signs must be standardized flat Signs. The Owner shall submit plans for his selected Signs for approval from the Architectural Committee. Plans submitted to the

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Architectural Committee for Sign approval must include shape, background color, and size, which will be limited to twelve (12) square feet per occupant, except that an Owner may select a predominant Occupant for whom he may make a separate submittal for Sign approval. Size, type and location of the predominant Occupant Sign shall conform to the on-premises business Sign standards herein. All Signs located on the exterior of the Building shall be consistent with the color and quality of the building materials utilized on the exterior of the Building, as approved by the Architectural Committee and shall be located within the sign band on the exterior of the Building.

Section 5.23 Animals. No birds, livestock or other animals shall be kept or maintained in any Building or on any Building Site without the express written consent of the Architectural Committee.

Section 5.24 Application of Restrictions. All real property within the Property shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. Reasonable variations from the strict application of the limitations and restrictions in this Article V in any specific case may be granted by the Architectural Committee in accordance with Article III, if such strict application would be unreasonable or unduly harsh under the circumstances or otherwise not in the best interests of, or harmful to, the other Owners and Occupants. Any such variance shall not constitute a waiver or estoppel with respect to any future action by the Architectural Committee.

Section 5.25 Pornographic or Obscene Materials. Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to and in strict accordance with the covenant and restriction that no portion of the Property shall ever be used for any business engaged in selling, exhibiting or delivering pornographic, obscene or sexually oriented materials or services, which restrictive covenant shall preclude, without limitation, the operation on all or any portion of the Property of any business or activity which involves nude dancing, partially nude dancing, the sale, lease or exhibition of sexually oriented devices or novelties or of pornographic or obscene books, magazines, movies, videos or any other type of medium.

ARTICLE VI ZONING AND SPECIFIC RESTRICTIONS

The Protective Covenants shall not be interpreted to permit any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or otherwise prohibited by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Protective Covenants shall govern and control. Any approval of the Architectural Committee required in this Declaration does not in any way relieve Owners and Occupants from obtaining approvals required by any governmental body or other person having jurisdiction or other legal rights thereunder.

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**ARTICLE VII
GENERAL EASEMENTS**

Section 7.1 Drainage. Declarant hereby reserves easements over each Building Site for drainage of surface water wherever and whenever reasonably necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that such easements shall terminate as to any particular Building Site when the initial principal Building and Landscaping approved for such Building Site have been completed. These easements and rights expressly include the right to install, repair, maintain and replace underground drainage pipes of facilities, to cut or remove any trees, bushes, shrubbery, grass or other landscaping improvements, to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance.

Section 7.2 Grading. Declarant may at any time make such cuts and fills upon the Property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to the Property and to drain surface waters therefrom; and may assign such rights to the City of West Jordan or to any municipal or public authority; provided, however, that after plans for the initial principal Building upon a Building Site shall have been approved by the Architectural Committee as provided herein, the rights of the Declarant under this section shall terminate with respect to all parts of such Building Site other than the easement area thereof, except that the City of West Jordan or any such municipal or public authority shall thereafter have the right to maintain existing streets and drainage structures.

Section 7.3 Maintenance and Interference. Declarant, Owners and Occupants, whichever the case may be, hereby agree to use their best efforts to minimize interference with Owners, Occupants and their guests and/or invitees in connection with the Declarant's use of the easements described in this Article VII.

**ARTICLE VIII
GENERAL**

Section 8.1 Owners Acceptance. The Owner or Occupant of any Building Site on the Property by acceptance of a Deed or other instrument conveying an interest in or title to any portion of the Property, or the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent Owner or Occupant of any portion of the Property, shall accept such Deed or other contract upon and subject to each and all of the Protective Covenants herein contained.

Section 8.2 Indemnity for Damages. Each and every Owner or Occupant and future Owner or Occupant in accepting a Deed or contract for any Building Site agrees to indemnify Declarant for any damage caused by such Owner or Occupant, or the contractor, agent, or employees of such Owner or Occupant to roads, streets, gutters, walkways, or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines or any other type of utility line owned by Declarant or for which Declarant has responsibility at the time of such damage.

Section 8.3 Enforcement. The Declarant, the Architectural Committee and any Owner or Occupant of any portion of Property shall have the right to enforce the provisions of this

Declaration. Enforcement of the provisions of this Declaration shall be by any appropriate proceeding at law or in equity against any Owner or Occupant, person, corporation, trust or other entity violating or attempting to violate said provisions, either to restrain such violation, to enforce liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue thereof. Neither Declarant nor the Architectural Committee shall be liable for enforcement of, or failure to enforce, said provisions, and the failure of Declarant or the Architectural Committee or of any Owner or Occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter

Section 8.4 Severability. Every one of the provisions and Protective Covenants of this Declaration is hereby declared to be independent of, and severable from the rest of the provisions and Protective Covenants and of and from every combination of the provisions and Protective Covenants. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or Protective Covenants which shall remain in full force and effect.

Section 8.5 Right of Declarant to Modify Protective Covenants With Respect to Unsold Building Sites. Declarant retains the right to establish and declare amendments to this Declaration as Declarant shall, from time to time deem to be reasonably appropriate so long as such amendments do not lessen the Protective Covenants for any Building Site as contained herein or increase the rights of Declarant or the Architectural Committee as to any Building Site. Such amendments shall be effective as to all portions of the Property that have not been previously conveyed to parties other than Declarant by deed, lease, or otherwise. In the event that the Owner or Occupant of any Building Site previously conveyed joins in the execution of any such amendment, then such amendment shall be effective also as to such Building Site. Any amendment shall be effective immediately upon the recording thereof in the office of the Recorder of Salt Lake County, Utah. This Declaration may not be modified to exempt any Building Site from any of the Protective Covenants in this Declaration.

Section 8.6 Captions. The captions preceding the various sections and subsections of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Declaration. Wherever and whenever applicable, the singular form of a word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

Section 8.7 Mortgages; Deeds of Trust. Breach of any of the provisions of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made of good faith and for value within the Property; but the provision of this Declaration shall be binding upon and effective against any Owner or Occupant of said Property whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Section 8.8 Duration, Modification and Termination. The conditions, restrictions, covenants, easements and reservations set forth in this Declaration shall run with and bind the land within the Property and shall be and remain in effect, and shall inure to the benefit of, and be enforceable by Declarant, the Architectural Committee or any Owner or Occupant of the Property subject to this Declaration, their heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded with the Recorder of Salt Lake County, Utah, unless extended for

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one or more successive terms of fifty (50) years by Declarant, its successors or assigns, in its or their absolute discretion; provided, however, that this Declaration may be amended or terminated by Declarant by an instrument in writing, properly executed, acknowledged and filed with the Recorder of Salt Lake County, Utah; and provided further that such amendment or termination shall not adversely affect any Owner's or Occupant's rights to use its Building Site for purposes consistent with this Declaration at the time of such Owner's or Occupant's first ownership or occupancy of the Building Site in question.

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed by a duly authorized person on the date first above written.

BINGHAM PARK, L.C., a Utah limited liability company

By: PACIFIC COMMERCIAL PROPERTIES CORP., a Utah corporation
Title: Manager

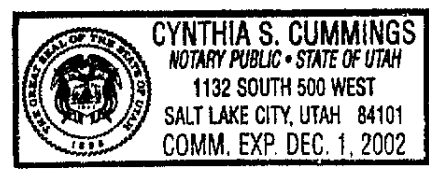
By: [Signature]
Douglas K. Anderson
Title: President

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

The foregoing instrument was acknowledged before me this 20th day of June, 2000, by Douglas K. Anderson in his capacity as the President of Pacific Commercial Properties Corp., a Utah corporation, which executed the foregoing instrument in its capacity as the Manager of Bingham Park, L.C., a Utah limited liability company.

[Signature]
NOTARY PUBLIC
Residing at: SALT LAKE CITY, UT

My Commission Expires:
12-1-2002



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