

Recording Requested by and  
When Recorded Return To:  
CALLISTER, NEBEKER & McCULLOUGH  
Suite 900, Gateway Tower East  
Salt Lake City, Utah 84133  
Attention: Steven E. Tyler

ENT 9825 BK 4512 PG 332  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1998 Feb 03 8:43 am FEE 50.00 BY JRD  
RECORDED FOR SIGNATURE TITLE

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR POST OFFICE PLACE  
(a Planned Unit Development, Orem City, Utah County, State of Utah)**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR POST OFFICE PLACE (a Planned Unit Development, Orem City, Utah County, State of Utah)** (the "Declaration") is made as of the day of 12<sup>th</sup> December, 1997, (the "Effective Date"), by **EsNET PROPERTIES, L.C.**, a Utah limited liability company formerly known as **BAT Investments, L.C.** and **WAGSTAFF INVESTMENTS**, a Utah limited partnership (collectively "Declarants").

**RECITALS:**

A. Declarants are the owner of the Property. The Property has been subdivided into separate Lots and it is contemplated that each of the Lots will or perhaps may be separately owned, encumbered, leased, and/or otherwise dealt with.

B. Declarants have deemed it desirable to grant certain easements over and across the Common Area and the Limited Common Area and to provide for the adoption of covenants, conditions and restrictions upon the Property and upon the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

C. Declarants deem it desirable to create the Association to which should be delegated the powers of maintaining certain Common Area and Limited Common Area within the Property as hereinafter provided, and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created.

NOW, THEREFORE, Declarants hereby covenant, agree and declare that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth.

I  
DEFINITIONS

**Section 1.1 Access Easement.** The term "Access Easement" as used herein shall have the meaning set forth in Section 9.1 below.

**Section 1.2 Assessable Lot Owner.** The term "Assessable Lot Owner" as used herein shall mean an Owner of an Assessable Lot.

**Section 1.3 Assessable Lots.** The term "Assessable Lots" as used herein shall mean Lots 2 through 6 (inclusive) and the term "Assessable Lot" as used herein shall mean any one of Lots 2 through 6 (inclusive), as applicable.

**Section 1.4 Association.** The term "Association" as used herein shall mean the Post Office Place Owners Association, a Utah non-profit corporation.

**Section 1.5 Benefitted Site.** The term "Benefitted Site" as used herein shall mean those portions of the Property that are benefitted by the easements and rights hereinafter set forth and constitute the dominant estate.

**Section 1.6 Board of Directors.** The term "Board of Directors" or "Board" as used herein shall mean the duly elected Board of Directors of the Association.

**Section 1.7 Burdened Site.** The term "Burdened Site" shall mean those portions of the Property that are burdened by the easements and rights hereinafter set forth and constitute the servient estate.

**Section 1.8 Common Area.** The term "Common Area" as used herein shall mean that portion designated on the Plat as "Common Area Access Easement" and more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof.

**Section 1.9 Common Area Utility Easement.** The term "Common Area Utility Easement" shall have the meaning set forth in Section 9.3 below.

**Section 1.10 County.** The term "County" as used herein shall mean Utah County, Utah.

**Section 1.11 Declarants.** The term the "Declarants" as used herein shall mean EsNet Properties, L.C. and Wagstaff Investments.

**Section 1.12 Declaration.** The term "covenants" and/or "Declaration" as used herein shall mean collectively the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

**Section 1.13 Limited Common Area.** The term "Limited Common Area" as used herein shall mean that portion designated on the Plat as "Limited Common Area and Cross Easement (Lots 2-6)" and more particularly described on Exhibit "C" attached hereto and by this reference made a part hereof.

**Section 1.14 Limited Common Area Access Easement.** The term "Limited Common Area Access Easement" as used herein shall have the meaning set forth in Section 9.2 below.

**Section 1.15 Limited Common Area Utility Easement.** The term "Limited Common Area Utility Easement" as used herein shall have the meaning set forth in Section 9.4 below.

**Section 1.16 Lot.** The term "Lot" as used herein shall mean any numbered plot of land shown upon any recorded subdivision map of the Property (with the exception of the Common Area).

**Section 1.17 Member.** The term "Member" shall mean those persons entitled to membership in the Association as provided in this Declaration and in the Association Articles of Incorporation and Bylaws.

**Section 1.18 Owner.** The term "Owner" as used herein shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.19 Permittees.** The term "Permittees" as used herein shall mean the invitees, agents, tenants, servants, visitors, and licensees of each of the Owners.

**Section 1.20 Plat.** The term "Plat" as used herein shall mean that certain plat for the Amended Amended Post Office Place, including a vacation of Post Office Place Amended, a Planned Unit Development, Orem, Utah, as recorded in the office of the County Recorder of Utah County, State of Utah, together with any and all amendments thereto.

**Section 1.21 Property.** The term "Property" as used herein shall mean that certain real property located in Utah, Utah, as more fully described in Exhibit "A" attached hereto.

**Section 1.22 Reimbursement Assessment.** The term "Reimbursement Assessment" as used herein shall mean a charge against each Owner and that Owner's Lot for the purpose of reimbursing the Association for any costs incurred by the Association on behalf of an individual Owner. A reimbursement assessment may also be levied by the Association for purposes of collecting any monetary penalties which may be imposed by the Association against an Owner who fails to comply with provisions of this Declaration or any rule or regulation adopted by the Association.

**Section 1.23 Utility Easement.** The term "Utility Easement" as used herein shall mean the easement referred to in Section 9.3.

**Section 1.24 Utility Lines.** The term "Utility Lines" as used herein shall mean those facilities and systems for the transmission of utility services, including but not limited to water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas lines, other public or private utilities and drainage and storage of surface water.

## II.

### NATURE AND PURPOSE OF EASEMENTS AND RIGHTS GRANTED

**Section 2.1 Easements and Other Rights Appurtenant.** Each and all of the easements and rights granted or created in this Declaration are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as appurtenances to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominant estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

**Section 2.2 Nature and Effect of Easements.** Each and all of the easements, covenants, restrictions and provisions contained in this Agreement:

- (a) Are made for the direct, mutual and reciprocal benefit of the Owners and the Permittees of each of the Owners;
- (b) Create mutual equitable servitudes upon each portion of the Property in favor of the other portions of the Property;
- (c) Constitute covenants running with the land and are a burden on the Burdened Sites located within the Property for the benefit of the Benefitted Sites located within the Property; and
- (d) Shall bind every person having any fee, leasehold, or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

### III. MEMBERSHIP AND VOTING RIGHTS

**Section 3.1 Organization.** The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be interpreted so as to be consistent with the provisions of this Declaration.

**Section 3.2 Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Transfer of a Lot shall automatically transfer membership in the Association.

**Section 3.3 Voting Rights.** The Association shall have one class of Members. Each Member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be entitled to all rights and privileges of membership. The vote for such Lot shall be exercised as its Owners collectively determine, but in no event shall more than one vote be cast with respect to any Lot. Any action by the Association which must have the approval of the membership of the Association before being undertaken, shall require the vote or written assent of a majority of the total voting power of the Association.

### IV. COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 4.1 Payment of Assessments.** Subject to the provisions of this Article IV, the Owners of the Assessable Lots shall be responsible for paying the costs of operating and maintaining the Common Areas and Limited Common Areas and, except as provided in Section 4.6 below, the Owner of Lot 1 shall not have any duty to pay for the costs of operating and maintaining the Common Areas and the Limited Common Areas. The current Owner of the Assessable Lots, on behalf of itself and for each such Lot owned, hereby covenants, and each Owner of an Assessable Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual or regular assessments or charges, (2) special assessments for capital improvements, (3) emergency assessments, and (4) reimbursement assessments, all such assessments to be established and collected as hereinafter provided. Each of such assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to such person's successors in title unless expressly assumed by them.

**Section 4.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the improvement, operation, and maintenance of the Common Area and the Limited Common Area and the performance of the duties of the Association as set forth in this Declaration.

**Section 4.3 Amount of Annual Assessments.** The amount and time of payment of annual assessments against each of the Assessable Lots shall be determined by the Board of Directors of the Association giving due consideration to the current maintenance costs and future needs of the Common Area and the Limited Common Area. Assessments shall be levied against each Owner according to the ratio of number of Assessable Lots owned by the Owner assessed to the total number of Assessable Lots subject to assessments.

**Section 4.4 Special Assessments for Capital Improvement.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement within either the Common Area or Limited Common Area, provided that any such assessment for all Lots for the fiscal year in the aggregate in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall be approved by the vote or written assent of a majority of the voting power of the Association. The foregoing limitation on special assessments shall not apply to any reimbursement assessment which is authorized by the provisions of this Declaration.

**Section 4.5 Emergency Assessment.** The Board may increase assessments necessary for emergency situations. For purposes of this section, an emergency situation is any of the following: (i) an extraordinary expense required by an order of the court; (ii) an extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; or (iii) an extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board.

**Section 4.6 Reimbursement Assessments.** The Association shall levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the determinations of the Board, the Association's Articles or Bylaws, or any rule or regulation adopted by the Association, if such failure results in the expenditure of monies by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Association. Except for collection of fines, such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, and shall be due and payable to the Association when levied.

**Section 4.7 Notice and Quorum for Meetings Called Under Sections 4.3 and 4.4.** Written notice of any meeting called to approve a Special Assessment under Section 4.4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent

(51%) of the voting power of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same quorum requirement.

**Section 4.8 Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, unless some other period for collection is adopted by the Board.

**Section 4.9 Amount of Annual Assessments; Due Dates.** The Board of Directors shall fix the amount of the annual assessment against each Lot at least sixty (60) days in advance of each fiscal year of the Association. Written notice of the amount of the annual assessments against each Lot shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. In the event the Board shall determine at any time that the estimate of the annual assessment for the current fiscal year is, or will become, inadequate to meet the expenses of the Association for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the total Association expenses and determine the revised amount of the annual assessment against each Lot.

**Section 4.10 Certification of Payment.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Said signed certificate shall be conclusive evidence as to all third parties relying thereon to show that all assessments acknowledged therein have been paid but shall not relieve any Owner of the responsibility for assessments not in fact paid.

**Section 4.11 Effect of Nonpayment of Assessments; Remedies of the Association.** Each Owner of any Lot on becoming an Owner of any Lot, is and shall be deemed to covenant and agree to pay to the Association each of the assessments provided for in this Declaration; and each Owner of a Lot, upon becoming an Owner, agrees to the enforcement of all such assessments in the manner herein specified. Each assessment not paid when due shall, together with interest, late payment fees, and costs of collection provided for herein, constitute and remain a continuing lien on the affected Lot. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing, by commencement of an action either against the Owner who is personally liable or to foreclose the lien against the Lot.

**Section 4.12 Subordination to Certain Mortgages.** The lien for the assessments provided for herein in connection with a given Lot shall not be subordinate to the lien of any deed of trust or mortgage, except the lien of a first Mortgage, or contract of sale given and made in good faith and for value that is of record as an encumbrance against such given Lot prior to the recordation of a claim of lien for the assessments provided for in this Declaration against such given Lot (such Mortgage being hereinafter referred to as a "prior Mortgage"). The sale or transfer of any Lot shall not affect any assessment lien created pursuant to the term of this Declaration to secure assessments becoming due whether prior to, on, or after the date of such sale or transfer, nor shall such sale or

transfer diminish or defeat the personal obligation of any Owner for delinquent assessments as provided for by Section 4.1 of this Article; provided, however, that the sale or transfer of any Lot pursuant to a judicial foreclosure or foreclosure by power of sale of a prior Mortgage, or proceeding in lieu of foreclosure of a prior Mortgage, shall extinguish any assessment lien which has attached and become effective with regard to the Lot being so transferred prior to the time of such sale or transfer, and shall prohibit the recordation of any assessment lien against such Lot on account of assessments which became due prior to the date of such sale or transfer; provided, however, that there shall be a lien on the interests of the purchaser at such sale which shall attach, be created and become effective and be foreclosed in accordance with this Declaration and which shall secure all assessments becoming due after the date of any such sale or transfer. For the purpose of this Section, a sale or transfer of a Lot shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the Lot.

**Section 4.13 Enforcement of Reimbursement Liens.** A lien for a Reimbursement Assessment shall be enforced in the same manner as all other liens under this Declaration.

## V.

### DUTIES AND POWERS OF THE ASSOCIATION

**Section 5.1 General Powers of the Association.** All powers relating to the management, operation and maintenance of the Common Area and the Limited Common Area shall be vested in the Association and in its Board of Directors. The primary purposes and powers of the Association are to provide for the operation, control, repair, maintenance and restoration of the Common Areas and to enforce the provisions of this Declaration and the Association's Articles and Bylaws, and any other instruments relating to the management and control of the Association and the Property. The Association may do any and all other acts that a corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties as set forth in this Declaration. The Association, through its Board of Directors, shall have the authority to delegate its powers to committees, officers or employees.

## VI.

### INSURANCE

**Section 6.1 Types.** The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Area and the Limited Common Area with a limit of not less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against such risks as shall customarily be covered or available with respect to planned unit developments and shall contain an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;



(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the insurable improvements, if any, in either the Common Area or the Limited Common Area, without deduction for depreciation, and clauses waiving subrogation against Owners and the Association and persons upon the Property with the permission of an Owner, such insurance to afford protection against loss or damage by fire and other hazards covered by the standard extended coverage policy of hazard insurance; and

(c) Such other insurance as a majority of the Members of the Association may, from time to time, approve.

**Section 6.2 Waiver by Members.** As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**Section 6.3 Premiums and Proceeds.** Insurance premiums for any insurance deemed necessary by the Association shall be an expense to be included in the annual assessments levied by the Association. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

## VII.

### DAMAGE AND DESTRUCTION AFFECTING COMMON AREA

**Section 7.1 Consent of Owners to Rebuild.** If all or any portion of the Common Area is damaged or destroyed by fire, or other casualty, then neither the Board, the Association, or any agent or employee thereof shall be required or permitted to take any action to repair or rebuild the damaged portions, or to cause the damaged portions to be repaired or rebuilt without the written consent of a majority of the Members as to the manner of repair or reconstruction and the payment therefor, except as provided in Section 7.2 of this Article in the event adequate insurance proceeds are available as set forth therein.

**Section 7.2 No Consent Required With Adequate Insurance.** Notwithstanding anything contained in Section 7.1 above to the contrary, if the cost of repairing or rebuilding the portion of the Common Area so damaged or destroyed does not exceed the amount of insurance proceeds available to the Association, the Board shall be authorized and required without the consent or approval of the Members, to contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor. In the event any excess insurance proceeds remain, or in the event of a decision by the Association not to reconstruct or replace such damages or destroyed improvements, the Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, subject to the prior rights of Institutional Holders of any first Mortgage whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Institutional Holder

of a first Mortgage on his Lot as to such pro rata distribution shall be governed by the provision of the Mortgage encumbering such Lot.

### VIII. EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area or the improvements thereon, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area. In the event of a total taking, the Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners. The rights of an Owner and the Institutional Holder of a Mortgage on his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

### IX. EASEMENTS

**Section 9.1 Access Easement Over Common Area.** Every Owner shall have a non-exclusive right-of-way and easement of ingress and egress over and across and of enjoyment in and to the Common Area (the "Access Easement"). The Access Easement shall be used exclusively for providing the Owners and their respective Permittees vehicular and pedestrian access to and egress from the Lots, and each of the Lots, and Center Street.

**Section 9.2 Access and Parking Easement Over Limited Common Area.** Every Assessable Lot Owner shall have a non-exclusive right-of-way and easement over and across and of enjoyment in and to the Limited Common Area (the "Limited Common Area Access Easement"). The Limited Common Area Access Easement shall be used exclusively for providing the Assessable Lot Owners and their respective Permittees vehicular and pedestrian access to and egress from the Assessable Lots, and each of the Assessable Lots, and Center Street and for parking of motor vehicles in such areas as may be designated, from time to time, by the Association.

**Section 9.3 Common Area Utility Easement.** Every Owner shall have a non-exclusive easement under, through, and across the Common Area for the installation and maintenance of underground Utility Lines (the "Common Area Utility Easement"). The Common Area Utility Easement shall be used exclusively for the installation and maintenance of underground Utility Lines that connect the Lots with primary Utility Lines. The easement area shall be no wider than necessary

to reasonably satisfy the requirements of a private or public utility. All such Utility Lines shall be installed and maintained below the ground level or surface of the Common Area. The installation, operation, maintenance, repair and replacement of such Utility Lines shall not unreasonably interfere with the use of the improved Common Area by the other Owners and their respective Permittees. To the extent that the installation, use, maintenance, or repair of a Utility Line servicing a Lot disturbs or damages either the surface or subsurface area of the Common Area, the Owner of the Lot serviced by such Utility Line shall promptly repair and restore the Common Area. Except as provided otherwise in this Section 9.3, the Owner of each Lot serviced by a Utility Line pursuant to the provisions of this Section 9.3 shall pay all costs and expenses with respect thereto, shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. The Owner of each Lot serviced by a Utility Line shall maintain, repair and replace the same at its sole cost and expense. To the extent that a Utility Line services more than one Lot, the costs associated with the installation, maintenance, repair, and/or use of such Utility Line shall, except as provided below in this Section 9.3, be born equally by each Lot serviced by such Utility Line. Notwithstanding anything to the contrary in this Section 9.3, to the extent that any Utility Line services all of the Assessable Lots, such Utility Line shall be installed, maintained and operated by the Association as a Common Area Improvement, with the costs of such installation, operation, and maintenance, being treated as an expense of installing, maintaining and operating the Common Area for which assessments can be made in accordance with the provisions of Article IV above.

**Section 9.4 Limited Common Area Utility Easement.** Every Assessable Lot Owner shall have a non-exclusive easement under, through, and across the Limited Common Area for the installation and maintenance of underground Utility Lines (the "Limited Common Area Utility Easement"). The Limited Common Area Utility Easement shall be used exclusively for the installation and maintenance of underground Utility Lines that connect the Assessable Lots with primary Utility Lines. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility. All such Utility Lines shall be installed and maintained below the ground level or surface of the Limited Common Area. The installation, operation, maintenance, repair and replacement of such Utility Lines shall not unreasonably interfere with the use of the improved Limited Common Area by the other Assessable Lot Owners and their respective Permittees. To the extent that the installation, use, maintenance, or repair of a Utility Line servicing an Assessable Lot disturbs or damages either the surface or subsurface area of the Limited Common Area, the Owner of the Assessable Lot serviced by such Utility Line shall promptly repair and restore the Limited Common Area. The Owner of each Assessable Lot serviced by a Utility Line pursuant to the provisions of this Section 9.4 shall pay all costs and expenses with respect thereto, shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Limited Common Area. Except as provided below in this Section 9.4, the Owner of each Assessable Lot serviced by a Utility Line shall maintain, repair and replace the same at its sole cost and expense. To the extent that a Utility Line services more than one Assessable Lot, the costs associated with the installation, maintenance, repair, and/or use of such Utility Line shall, except as

provided below in this Section 9.4, be born equally by each Lot serviced by such Utility Line. Notwithstanding anything to the contrary in this Section 9.4, to the extent that any Utility Line services all of the Assessable Lots, such Utility Line shall be installed, maintained and operated by the Association as a Limited Common Area Improvement, with the costs of such installation, operation, and maintenance, being treated as an expense of installing, maintaining and operating the Limited Common Area for which assessments can be made in accordance with the provisions of Article IV above.

## X. GENERAL PROVISIONS

**Section 10.1 Enforcement.** Any Owner or the successor in interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other sums for such violation. Failure by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 10.2 Severability.** Should any of the covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

**Section 10.3 Term.** This Declaration and the covenants herein contained shall be in effect until fifty (50) years from the Effective Date and shall automatically be extended for successive periods of ten (10) years thereafter unless within six (6) months prior to the expiration of the initial term or any ten (10) year renewal period a written agreement executed by majority of the then record Owners shall be placed on record in the Office of the County Recorder of Utah County by the terms of which agreement the effectiveness of this Declaration is terminated or the covenants herein contained are extinguished in whole or in part as to all or any part of the property then subject thereto.

**Section 10.4 Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a business office complex or tract and for the maintenance of the Common Area. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

**Section 10.5 Singular Includes Plural.** Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

**Section 10.6 Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in

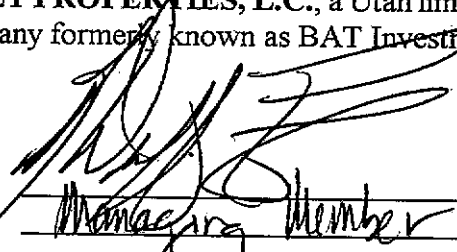
whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by any Owner in the Property. Such remedy shall be deemed cumulative and not exclusive.

**Section 10.7 Attorneys' Fees.** In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees, whether or not such controversy or claim is litigated and prosecuted to judgment.

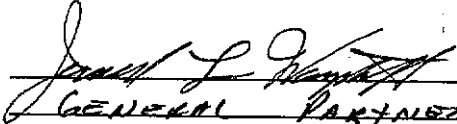
**Section 10.8 The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferee and assigns, binds himself, his heirs, personal representatives, successors, transferee and assigns, to all of the provisions restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby, and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferee thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereto set their hands as of the Effective Date.

**EsNET PROPERTIES, L.C.**, a Utah limited liability company formerly known as BAT Investments, L.C.

BY:   
ITS: Managing Member

**WAGSTAFF INVESTMENTS**, a Utah limited partnership

BY:   
ITS: GENERAL PARTNER

STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 19 day of December, 1997, by R. Duff Thompson, the Manager of EsNet Properties, L.C., a Utah limited liability company.



My Commission Expires:

4-8-99

Michelle H. Timm  
NOTARY PUBLIC

Residing At:

Salt Lake County, Utah

STATE OF UTAH )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

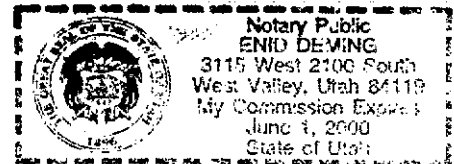
The foregoing instrument was acknowledged before me this 13 day of December, 1997, by Jared L. Wagstaff, the General Partner of Wagstaff Inv. Ltd., a limited partnership.

Enid Deming  
NOTARY PUBLIC

My Commission Expires:

6-01-2000

Residing At:



**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY**

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

Commencing at a point located North 89°15'27" West along the quarter Section line 1809.05 feet and North 26.51 feet from the East quarter corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°45'14" West 202.07 feet; thence North 01°12'35" West 653.93 feet; thence South 88°18'00" East 441.06 feet; thence South 247.85 feet; thence North 89°45'14" West 225.00 feet; thence South 394.78 feet to the point of beginning.

## EXHIBIT "B"

## Description of Common Area

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

Commencing at a point located North  $89^{\circ}15'27''$  West 1809.05 feet along the quarter Section line and North 26.51 feet from the East quarter corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North  $89^{\circ}45'14''$  West 81.33 feet; thence North 17.43 feet; thence along the arc of a 70.00 foot radius curve to the right 74.18 feet (chord bears North  $30^{\circ}21'26''$  East 70.76 feet); thence along the arc of a 15.00 foot radius curve to the left 15.89 feet (chord bears North  $30^{\circ}21'26''$  East 15.16 feet); thence North 65.95 feet; thence along the arc of a 8.00 foot radius curve to the left 12.53 feet (chord bears North  $44^{\circ}51'37''$  West 11.29 feet); thence East 45.86 feet; thence South 165.87 feet to the point of beginning.



**EXHIBIT "C"****Description of Limited Common Area**

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

Commencing at a point located North 89°15'27" West along the quarter Section line 1809.05 feet and North 192.38 feet from the East quarter corner of Section 15, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°49'32" West 121.99 feet; thence North 400.92 feet; thence South 89°45'14" East 267.42 feet; thence South 122.94 feet; thence South 89°45'14" East 79.58 feet; thence South 49.01 feet; thence North 89°45'14" West 225.00 feet; thence South 228.81 feet to the point of beginning.

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