

AFTER RECORDING, PLEASE RETURN TO:

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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "**Declaration**"), dated as of the 2nd day of October, 2012, is executed by VIEW 72 RETAIL, L.C., a Utah limited liability company (the "**Declarant**").

RECITALS:

A. Declarant owns the following tracts of real property located in Salt Lake County, State of Utah:

(1) Certain parcels of real property the legal description of which is set forth on Exhibit "A" attached hereto and made a part hereof (individually, a "**Retail Lot**" and collectively, the "**Retail Lots**").

(2) Certain parcels of real property the legal description of which is set forth on Exhibit "B" attached hereto and made a part hereof (the "**Hotel Lot**").

B. ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company ("**Arbor Gardner**"), an affiliate of Declarant, owns a certain parcel of real property, the legal description of which is set forth on Exhibit "C" attached hereto and made a part hereof (the "**Arbor Gardner Parcel**"; and together with the Retail Lots and the Hotel Lot, the "**View 72 Corporate Center**").

C. Declarant desires to establish with respect to the Retail Lots and the Hotel Lot certain reciprocal parking rights, reciprocal rights of ingress and egress, and certain covenants and restrictions and Arbor Gardner and Declarant, as applicable, desire to establish certain use restrictions with respect to the View 72 Corporate Center, all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant, and for the purposes of Section 21(a) only, Arbor Gardner, makes the following declarations, creates the following easements and establishes the following covenants and restrictions, all of which apply to, bind, affect and run with title to each Lot and, as applicable, the View 72 Corporate Center.

1. **Definitions.** Certain terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following terms shall have the meanings indicated.

(a) **"Access Areas"** means all areas within each Lot intended to be used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians, but does not include any portion of a Lot on which a Building or Related Improvement is located at any time or from time to time.

(b) **"Benefitted Parties"** means, with respect to a Lot, the Owners and Occupants of that Lot, and their respective employees, customers, guests, invitees and licensees.

(c) **"Building or Related Improvement"** means a building or other principal structure on a Lot (including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items).

(d) **"Common Area"** means, collectively, all of those areas on any Lot which are not occupied by a Building or Related Improvement. The Common Area shall include, but not be limited to, Access Areas and Parking Areas. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the Building or Related Improvement to which they are attached and are not a part of the Common Area.

(e) **"Generally Available"** means that parking stalls are available; provided that, because the Benefitted Parties entitled to park on a Lot may have unanticipated or unusual numbers of employees, guests and invitees on any given day or at any given time, "Generally Available" shall not mean that a parking space is always immediately available to all Benefitted Parties and that a parking space may be unavailable on a limited number of days to some Benefitted Parties due to unusual and non-recurring circumstances such as, an overlap in "shifts" of workers, during temporary repairs, maintenance and replacement, construction of improvements on a Lot, or on heavy snow days.

(f) **"Governmental Authorities"** means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a Lot or its use, operation, maintenance or development.

(g) **"Hotel"** means a hotel, motel, or similar business used for temporary, overnight lodging for third parties.

(h) **"Hotel Operating Conditions"** means that the Owner of the Hotel Lot has (i) constructed a Hotel on the Hotel Lot containing not less than eighty-five (85) rooms for overnight guests, on or before the date which is eighteen (18) months after the date hereof, and (ii) not discontinued the operation of such Hotel for a period in excess of twelve (12) consecutive months.

(i) **"Improvements"** means all improvements, of whatever kind or character, to the Access Areas and Parking Areas on a Lot including, without limitation, any landscaping, driveways, walkways, exterior lighting, striping, curbs, retaining walls, screening walls and signs.

(j) **"Index"** means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the **"Bureau"**) "All Items" for All Urban Consumers, U.S. City Average (1982-84 = 100). Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as agreed to by each of the Owners will be substituted therefor.

(k) **"Laws"** means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Lots and the Building or Related Improvement from time to time in effect.

(l) **"Lot"** means the Hotel Lot or a Retail Lot, but shall not include any other real property in the View 72 Corporate Center.

(m) **"Lots"** means the Hotel Lot and the Retail Lots, but shall not include any other real property in the View 72 Corporate Center.

(n) **"Mortgage"** means a recorded mortgage, deed of trust or other security agreement creating a lien on an Owner's interest in a Lot or a portion of a Lot as security for the payment of indebtedness.

(o) **"Mortgagee"** means the mortgagee, beneficiary or other secured party under a Mortgage.

(p) **"Occupant"** means any Person that, by virtue of a contract to purchase, a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Lot or portion of any Lot.

(q) **"Owner"** means the Person that, at the time concerned, is the owner of record in the office of the County Recorder of Salt Lake County, Utah, of a fee interest in any Lot or portion of any Lot. In the event that, at any time, more than one Person owns the fee interest in a Lot, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Lot encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

(r) **"Parking Areas"** means the areas on any Lot that are used at any time and from time to time for parking in conformance with this Declaration.

- (s) **“Person”** means a natural person or a legal entity.
- (t) **“Plat”** means the View 72 Retail Subdivision Plat recorded on September 27, 2012, as may be modified after the date hereof.
- (u) **“Retail Owner”** shall mean a Owner of a Retail Lot.
- (v) **“Retail Owners”** shall mean, collectively, all of the Owners of the Retail Lots.

2. Grant of Easements. Declarant hereby creates the following easements appurtenant to each Lot for the benefit of the Benefitted Parties of each of the other Lots, which easements shall be appurtenant to each of the other Lots:

(a) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and Parking Areas on each Lot for pedestrian use by the Benefitted Parties of each other Lot.

(b) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and Parking Areas on each Lot for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties of each other Lot.

(c) A reciprocal, non-exclusive, perpetual easement for vehicular parking upon, over and across the Parking Areas located on each Lot. All Building or Related Improvement constructed on any Lot shall be developed to comply with the Laws governing parking for the use proposed for the Lot without reliance on any other Lot. Notwithstanding the foregoing provisions of this subsection 2(c) to the contrary, so long as the Hotel Lot complies with the Hotel Operating Conditions, the Retail Owners of Lot 7 and Lot 9 (as shown on the Plat) shall maintain at least fifty-one (51) parking spaces on such Lots in the areas shown on Exhibit “D” attached hereto or such other area as may be approved in accordance with Section 3(b)(iv) below, which are Generally Available for the Benefitted Parties of the Hotel Lot during the hours of 6:30 pm to 7:30 am. If the Hotel Lot fails at any time to meet the Hotel Operating Conditions, the obligation of the Retail Owners of Lot 7 and Lot 9 (as shown on the Plat) to maintain such parking spaces as required by this Section 2(c) shall be forever terminated.

(d) Construction and Availability of Parking Areas. Declarant shall, at Declarant’s sole cost and expense, construct at least fifty-one (51) parking spaces on a portion of the Parking Areas located on Lot 7 and Lot 9 as shown on the Plat to be used on a non-exclusive basis by the Benefitted Parties of the Hotel Lot and the Retail Lots, such portion being depicted on Exhibit “D” attached hereto and incorporated herein (the “Parking Spaces”). The Owner of the Hotel Lot shall notify Declarant in writing that it is ready and willing, and that it has obtained all building permits or other permits and completed applications required by Governmental Authorities, to build the Hotel on the Hotel Lot (the “Hotel Construction Notice”). So long as the Hotel Construction Notice is given between the time period of February 15th and September 15th of a calendar year, Declarant shall complete the Parking Spaces within ninety (90) days of receiving the

Hotel Construction Notice subject, however, to delays incident to strikes, lockouts, acts of God, embargoes, governmental restrictions, and other causes beyond Declarant's reasonable control. In the event the Hotel Construction Notice is received after September 15th of a calendar year, Declarant's obligation to construct the Parking Spaces shall not commence until the following April 15th.

3. Alteration, Relocation or Changes to Access Areas and Parking Areas. The Owner of a Lot shall be permitted to alter, relocate or change the configuration of the Access Areas and the Parking Areas on the Lot which it owns at any time and from time to time but only upon strict compliance with the provisions of this Section.

(a) Any proposed alteration, relocation or other change shall comply with all Laws.

(b) Subject to the provisions of Section 3(e) below, any proposed alteration, relocation or other change shall not, without the prior written consent of all Owners:

(i) Permanently reduce the number of parking stalls located on a Lot below the requirements of all Laws;

(ii) Unreasonably impact the rights of the Benefitted Parties of the other Lots;

(iii) Modify or unreasonably obstruct any direct access areas or drive isles between a Lot and a public roadway; or

(iv) So long as the Hotel Lot is complying with the Hotel Operating Conditions, reduce the parking spaces on the Retail Lots shown as Lot 7 and Lot 9 on the Plat below fifty-one (51) spaces which are Generally Available for the Benefitted Parties of the Hotel Lot during the hours of 6:30 pm to 7:30 am, or relocate such parking spaces from the area generally shown on Exhibit "D" attached hereto.

(c) The Owner proposing to make any alteration, relocation or other change shall pay the entire cost of such alteration, relocation or change.

(d) The Owner proposing to make such alteration, relocation or change may not perform any work on, or stage any work from, any other Lot without the consent of the Owner of the other Lot, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with obtaining such consent, the Owner proposing to make such alteration, relocation or change shall provide copies of its preliminary plans to the Owner of the other Lot prior to commencing such work for review and approval by the Owner of the other Lot, which consent shall not be unreasonably withheld, conditioned or delayed. In the event an Owner (the "**Submitting Owner**") submits a preliminary plan to the Owner of the other Lot (the "**Consenting Owner**") for its consent as required by this subsection (d), such preliminary plan shall be deemed approved if not disapproved in writing within twenty (20) days of the delivery of the preliminary plans to the Consenting Owner. In the event a Consenting Owner disapproves of such

preliminary plans, the Consenting Owner shall, within such twenty (20) day period, deliver to the Submitting Owner the Consenting Owner's written objections to the preliminary plans which objections shall include a reasonably detailed description of what changes, if made, would cause the Consenting Owner to give its approval of the preliminary plans. The Submitting Owner shall, to the extent the Submitting Owner agrees with the Consenting Owner's requested changes, revise the preliminary plans and resubmit them to the Consenting Owner for its approval in accordance with the procedures set forth above in this subsection (d). Notwithstanding the foregoing to the contrary, an Owner shall not be required to obtain the consent of the other Owners to make any alteration, relocation or modification on such Owner's Lot if such alteration, relocation or modification is required by Law, provided, the Owner making such alteration, relocation or modification shall give each of the other Owners at least thirty (30) days prior written notice of such change.

(e) Notwithstanding the provisions of this Section 3 to the contrary, (i) in the event an Owner of Lot 1, 2, 3, 4, 5 and/or 6, as shown on the Plat, is required by the provisions of this Section 3 to obtain the consent of the other Owners, such consent is only required to be obtained from the Owner(s) of Lots 1, 2, 3, 4, 5 and/or 6, as shown on the Plat, as applicable, and (ii) in the event the an Owner of Lot 7, 8 and/or 9, is required by the provisions of this Section 3 to obtain the consent of the other Owners, such consent is only required to be obtained from the Owner(s) of Lots 7, 8 and/or 9, as applicable.

(f) The Owner proposing to make any alteration, relocation, or other change shall construct and complete such alteration, relocation, or change in a diligent and timely manner subject only to delays beyond the reasonable control of the Owner.

4. Insurance and Indemnification.

(a) Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah on its Lot a policy or policies of (i) commercial general liability, bodily injury, personal injury and property damage liability insurance ("**CGL Insurance Policy**") with combined single limits of at least Five Million Dollars (\$5,000,000) (which such limit will be increased on January 1, 2020, and on every fifth anniversary of such date (each an "**Adjustment Date**"), by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date)) and (ii) replacement cost property insurance on each Building or Related Improvement.

(b) Each Owner shall name the other Owners as an additional insured under the CGL Insurance Policy described above.

(c) Each Owner shall, upon the reasonable request thereof from any other Owner, furnish to the Person making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article.

(d) Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver.

(e) If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then the other Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the other Owner may do so and may then invoice the defaulting Owner for the expense incurred.

(f) The Owner of each Lot hereby agrees to indemnify, defend and hold harmless the Owners and the Occupants of the Lots from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the negligent or willful act or omission of the indemnifying person, its tenants, subtenants, agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

5. Operation and Maintenance of the Lots.

(a) Taxes and Assessments.

(i) Each Owner will pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Lots including any Common Areas located upon such Lot. For purposes of this Declaration, "Taxes" will mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any Governmental Authority upon the land within each Lot and/or any Improvements therein or thereon.

(ii) Each Owner will have the right, in good faith, to contest the amount of Taxes owing with respect to its Lot; provided that such Owner will take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within each Lot, including recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

(b) Subject to the provisions of Section 5(d) below, each Owner, at its own cost and expense, will maintain, or cause to be maintained, its Lot (including the Common Areas thereof) in a safe, clean, attractive, tenantable first-class condition.

(c) Each Owner will be solely responsible for obtaining and paying for all utilities and services required and used on its Lot. Notwithstanding the foregoing, subject to the provisions of Section 5(d) any such utility costs which are attributable to the Common Areas will be paid by the Owner of the Lot containing the same. With respect to utilities on the Common Areas on the Retail Lots, if commercially feasible, such utilities shall be separately sub-metered.

(d) Joint Maintenance of the Retail Lots.

(i) The Retail Owners shall appoint a single Person, which may be a Retail Owner or another third party (the "**Manager**") who shall be obligated, on behalf of the Retail Owners, to operate and maintain the Common Areas on the Retail Lots in accordance with the provisions of this Declaration. So long as any Retail Owner, in whole or in part, is owned by, owns or is under common ownership with the Declarant, Manager shall be appointed by the Declarant. If there is no Retail Owner which, in whole or in part, is owned by, owns or is under common ownership with the Declarant, Manager shall be elected by a majority of the Retail Owners. The total number of votes that may be cast by the Retail Owners is 100. For purposes of this Section 5(d), each Retail Owner shall be allocated a number of votes, rounded to the nearest one hundredth percent, obtained by multiplying the total votes of 100 by a fraction, the numerator of which is the gross rentable square footage of the Building(s) located on such Retail Owner's Lot(s) and the denominator of which is the gross rentable square footage of all Buildings located on all Retail Lots (a "**Retail Owner's Voting Percentage**"). If Manager is not a Retail Owner, such Manager shall enter into a separate agreement with the Retail Owners pursuant to which such Manager agrees to perform the obligations of Manager under this Declaration, which agreement shall be in form an substance acceptable to the Retail Owners holding in the aggregate more than fifty percent (50%) of the Retail Owner's Voting Percentage. Such agreement may be executed by the Retail Owners holding in the aggregate more than fifty percent (50%) of the Retail Owner's Voting Percentage and shall thereafter be binding on all Retail Owners. Initially, the Declarant has appointed the Declarant as Manager.

(ii) Prior to Manager commencing any operation and/or maintenance duties, Manager shall obtain, and thereafter maintain while continuing to be

Manager, the following insurance coverages: (A) a CGL Insurance Policy with combined single limits of at least Five Million Dollars (\$5,000,000) (which such limit will be increased on each Adjustment Date by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date)), (B) worker's compensation insurance in accordance with applicable Law, (C) employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease, and (D) automobile liability insurance for owned, hired and non-owned automobiles with limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The costs of maintaining such insurance shall be included as Common Area Maintenance Costs (as defined below). All such insurance shall name each of the Retail Owners as additional insureds.

(iii) Manager shall operate and maintain the Common Areas on the Retail Lots in accordance with the requirements of this Declaration. Each of the Retail Owners hereby grants to Manager, its agents, contractors and employees, a license to enter upon its Lot for the purposes of performing Manager's duties hereunder. At least thirty (30) days prior to any major work in the Parking Areas or Access Areas, Manager shall give notice to each of the Retail Owners of the scope thereof, and the proposed commencement and completion dates; except in an emergency, such major work shall not be performed between October 15th and the following January 15th. Manager shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Areas on the Retail Lots ("**Common Area Maintenance Costs**") and for the performance of other obligations imposed on Manager pursuant to this Declaration, and shall promptly pay all such costs when incurred. In connection with performing its obligations under the Declaration, Manager may hire or subcontract with third Persons, provided, if such Persons are affiliated with Manager such contracts must be on terms similar to those obtained on an arm's length basis.

(iv) Each Retail Owner agrees to pay its proportionate share of Common Area Maintenance Costs actually incurred during each calendar year, plus a management fee payable to Manager in the amount equal to five percent (5%) of all of the Common Area Maintenance Costs (the "**Management Fee**"). The Management Fee shall be included in the Common Area Maintenance Costs. The portion of the Common Area Maintenance Costs which each Retail Owner is obligated to pay shall be calculated by multiplying the Common Area Maintenance Costs by a fraction, the numerator of which is the gross rentable square footage of the Building(s) located on such Retail Owner's Lot(s) and the denominator of which is the gross rentable square footage of all Buildings located on all Retail Lots. Each Retail Owner shall pay to Manager in equal monthly payments, in advance, on the first day of each calendar month, such Retail Owner's share of Common Area Maintenance Costs (as calculated pursuant to

this subsection) based upon the amount set forth in the approved Budget, or the Budget from the prior calendar year plus a five percent (5%) increase if the Budget for the current calendar year has not been approved in accordance with Section 5(d)(vi) below.

(v) Common Area Maintenance Costs shall not include: (A) any late charges or fees or any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation by Manager or anyone else relating to the Retail Lots; (B) any charge for electricity for Building accent lighting or architectural features, or any Building security lighting; additionally, any charge for electricity to a Retail Owner that separately pays the cost of power to illuminate the Common Area on its Lot; (C) any charge for water to a Retail Owner that separately pays the cost of water for irrigating the landscaping upon its Lot; (D) any costs for promotional, marketing, seasonal or holiday events of any type; (E) any costs to clean up or repair the Common Areas on the Retail Lots resulting from any construction, maintenance or replacement of Retail Owner's Building(s); (F) any costs associated with trash and/or garbage removal from a Retail Owner's Building(s), such removal obligation being the responsibility of such Retail Owner; (G) any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, site improvements, signs, trees, plants or other landscaping; (H) other than for a resurfacing, resealing and restriping of the Access Areas and the Parking Areas which are considered maintenance items, any cost for replacement of base for the Access Areas and the Parking Areas, such replacement being a "capital improvement" or any other capital costs or improvements, all of which is the sole responsibility of the Retail Owner on whose Lot such improvements are made or required to be made; (I) any costs of maintaining insurance required by Section 4 of this Declaration, which costs shall remain the responsibility of the applicable Retail Owner; (J) any Taxes which shall remain the responsibility of the applicable Retail Owner; (k) Manager's profit, administrative and overhead costs (other than the Management Fee); and (l) any fee or charge relating to the management and/or supervision of the operation of the Common Area on the Retail Lots, or any part thereof, paid to a third party, commercial management company or similar provider.

(vi) No later than sixty (60) days prior to the commencement of a calendar year, Manager shall provide each of the Retail Owners an estimated budget for the next succeeding calendar year (the "**Budget**"). If Retail Owners holding an aggregate of sixty percent (60%) or more of the Retail Owner's Voting Percentage believe the charge for a particular line item in the Budget is excessive, such Retail Owners shall notify Manager of such belief, and thereupon Manager shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder shall be utilized as soon as the contract with the existing provider can be terminated without penalty. Notwithstanding the foregoing, Manager shall not be required to accept a low bid pursuant to this subsection if Manager has a commercially reasonable basis for not

accepting it. The Budget shall reasonably identify each of the categories of Common Area Maintenance Costs to be incurred by Manager.

(vii) If Retail Owners holding an aggregate of sixty percent (60%) or more of the Retail Owner's Voting Percentage disapprove of the proposed Budget, such Retail Owners shall give written notice to Manager within thirty (30) days of Manager's delivery of such Budget (the "**Budget Objection Notice**"), which Budget Objection Notice shall include a reasonably detailed description of what changes, if made, would result in the such Retail Owners approving the proposed Budget. If a Budget Objection Notice is not delivered to Manager within such thirty (30) day period, the Budget shall be deemed approved. If a Budget Objection Notice is delivered to Manager within such thirty (30) day period, Manager shall revise the Budget and resubmit the Budget to the Retail Owners for their approval in accordance with the procedure set forth above. If a Budget for the next calendar year is not approved by December 15th of a calendar year, until the approval of the Budget for such next calendar year the Budget from the prior calendar year shall be used, plus an increase of five percent (5%) for each line item.

(viii) Manager shall use its commercially reasonable efforts to operate and maintain the Common Area on the Retail Lots in accordance with the then current Budget. Notwithstanding the foregoing, Manager shall have the right to make emergency repairs to the Common Area on the Retail Lots to prevent injury or damage to Persons or property, it being understood that Manager shall nevertheless advise the Retail Owners of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00 (which amount shall be adjusted on each Adjustment Date calculated by multiplying the then applicable amount by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63 months before such Adjustment Date), then Manager shall submit a supplemental billing to each Retail Owner, together with evidence supporting such cost, and each Retail Owner shall pay its share thereof (calculated in accordance with subsection 5(d)(iv) above) within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of Common Area Maintenance Costs for that year.

(ix) Within one hundred twenty (120) days after each calendar year, Manager shall furnish each Retail Owner with a written reconciliation statement comparing the actual Common Area Maintenance Costs paid by Manager during the previous calendar year against the amounts paid by such Retail Owner during the previous calendar year. If the annual reconciliation statement indicates that Common Area Maintenance Costs paid by a Retail Owner for any year exceeded the actual Common Area Maintenance Costs owing by a Retail Owner during such year, Manager shall promptly pay the amount of such excess to each applicable Retail Owner. If the annual reconciliation statement indicates that Common Area

Maintenance Costs paid by a Retail Owner for any year is less than the actual Common Area Maintenance Costs owing by such Retail Owner for such calendar year, each such Retail Owner shall pay to Manager any such deficiency within thirty (30) days of such Retail Owner's receipt of such reconciliation statement.

(x) For a period of two (2) years after the date of receipt of a reconciliation statement, each Retail Owner shall have the right to audit Manager's books and records pertaining to the operation and maintenance of the Common Area on the Retail Lots for the calendar year covered by such reconciliation statement. A Retail Owner shall notify Manager of such Retail Owner's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of Common Area Maintenance Costs, or any allocation thereof to a particular Retail Owner, the auditing Retail Owner shall provide Manager with a copy of the audit, and an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by the auditing Retail Owner unless such Retail Owner shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Manager as such Retail Owner's share for the applicable calendar year, in which case Manager shall pay the cost of such audit. If Manager disputes such audit, Manager and the auditing Retail Owner shall work in good faith to resolve such dispute. If such dispute shall not have been settled by agreement, the parties to the dispute shall submit the dispute to arbitration within ninety (90) days after the delivery of the results of the audit. Pending the determination of such dispute by agreement or arbitration as aforesaid, each Retail Owner shall continue to pay Common Area Maintenance Costs in accordance with Manager's statement, and such payment shall be without prejudice to such Retail Owner position. If the dispute shall be determined in a Retail Owner's favor, Manager shall, within thirty (30) days of the dispute, refund to the Retail Owner the amount of any overpayment. Manager agrees to grant each Retail Owner reasonable access to Manager's books and records for the purpose of verifying the Common Area Maintenance Costs.

(xi) Manager agrees to defend, indemnify and hold each Retail Owner harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Manager of the Common Areas on the Retail Lots and the performance of other functions expressly required of Manager by this Declaration, and if any Retail Lot shall become subject to any such lien, Manager shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

(xii) The provisions of this Section 5(d) are for the benefit of the Retail Owner's only, and no other Person, including, without limitation, the Owner of the Hotel Lot, shall be entitled to enforce the provisions of this Section 5(d) against the Retail Owners.

6. Casualty.

(a) If any Building or Related Improvement or other Improvement situated on a Lot is damaged or destroyed by any casualty, the Owner upon whose Lot such Building or Related Improvement or other Improvement is situated will promptly (i) repair and/or reconstruct such Building or Related Improvement or other Improvement and also promptly remove debris and keep the affected portions of the Lot neat, orderly and well maintained and covered during such repair or reconstruction; or (ii) promptly demolish the Building or Related Improvement and remove the debris and keep the Lot (including the demolition area) neat, orderly and well maintained.

(b) Upon any damage or destruction to the Common Area on a Lot the Owner upon whose Lot such damage or destruction occurred, at its sole cost and expense, will promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Areas. If the damaged or destroyed Common Areas include or affect any entrances to the Lots, access ways within the Lots and the Owner of the affected Lot does not promptly restore, repair or rebuild the damaged or destroyed Common Areas, then any one or all of the Owners of the other Lot will have the right, by written notice to the Owner upon whose Lot such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Areas, in which event the electing Owner or Owners will effect such restoration, repair or rebuilding, and the Owner of the Lot upon which such damage and destruction occurred will bear the actual out of pocket costs incurred to restore, repair and rebuild the affected Common Areas which affect any entrances to the Lots, access ways within the Lots. If the Owner of the affected Lot does not repair damaged or destroyed Common Areas, and no other Owner elects to effect such repair within 30 days after the date of the damage or destruction, then the affected Owner will promptly remove any debris from its Lot and keep the affected portions of the Lot neat, orderly, and well maintained and covered until subsequently improved or constructed upon. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Areas, the plans or specifications for such work will be subject to the prior written approval of Owners in accordance with Section 3(d). Each affected Owner will use all commercially reasonable due diligence to complete such restoration and repair of the Common Areas as expeditiously as possible with as little delay and as little disruption as circumstances permit.

7. Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of a Lot, that portion of the award attributable to the value of the interest in the Lot so taken will be payable to the Owner of such Lot and no claim thereon will be made by any other Owner; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim will reduce the award to the Owner of the condemned Lot; provided further, however, that the Owner of any portion of a Lot to be taken will promptly repair and restore the remaining portion of the Lot owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner.

8. No Interference. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in this Declaration shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements.

9. Title and Mortgage Protection.

(a) No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

(b) A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration.

10. Estoppel. Each Owner shall, within fifteen (15) days after request from the other Owner, execute and deliver to the other Owner a written declaration certifying that such Owner is not in default under this Agreement or, to such Owner's knowledge, are there any defaults by the other Owner under this Agreement and that all costs and expenses due under this Agreement have been paid. Each Owner's Mortgagee and prospective purchasers shall be entitled to rely on such certification.

11. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated, but only by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of the Lots. The term of this Declaration is perpetual regardless of any change of ownership of the Lots or the removal, alteration or destruction, in whole or in part, of a Building or Related Improvement; this Declaration shall be and remain in force and effect until terminated pursuant to this Section.

12. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Lots, and shall be binding upon and shall inure to the benefit of each Owner and any Person who acquires or comes to have any interest in any Lot, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and

requirements hereof shall also inure to the benefit of each and each Person owning any interest in or occupying any portion of a Lot. Each Owner shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Lot, the Person so acquiring, coming to have such interest in, or occupying a Lot, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

13. Enforcement. In the event of a breach of any of the terms, covenants, conditions or restrictions hereof, including the payment of Taxes and assessments, by any Owner of any portion of any Lot, and if such breach continues for a period of thirty (30) days after the defaulting Owner's receipt of a notice of such breach, or such longer period as may be reasonably required to cure such breach provided the defaulting Owner has commenced the cure of such breach with such thirty (30) day period and is diligently prosecuting the cure of such breach, any one or all of the Owners of the other Lot shall be entitled forthwith and after written notice to such breaching party to perform any of the breaching party's obligations hereunder or to make any payment required hereunder, as the breaching party's attorney-in-fact, and by reason of so doing, the Owner taking such action shall not be liable or responsible for any loss or damage thereby sustained by the breaching party. All actual out of pocket, reasonable costs and expenses incurred by any Owner in performing any of the breaching Owner's obligations or in making any such payment shall be assessed against the defaulting Owner and, upon filing a notice of such assessment in the Salt Lake County Recorder's Office, shall constitute a lien against the real property or the interest therein for which such payment or performance was made, but any such lien shall be and is hereby made subordinate to the lien of any first Mortgage covering any portion of the Lots. The Owner of a Lot or any portion of a Lot shall also have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration the party prevailing in such action or arbitration shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered. In addition to the foregoing, if a defaulting Owner shall fail to pay another Owner amounts due by such defaulting Owner within thirty (30) days after delivery of written demand on the defaulting Owner, then: (i) a five percent (5%) late payment fee shall be added to the amount due on the thirty-first (31st) day; and (ii) the unpaid balance shall thereafter accrue interest at the rate of ten percent (10%) per annum.

14. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

15. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this

Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

16. Pronouns and Plurals. Whenever the contest may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

17. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules.

18. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

19. Exhibits. All exhibits annexed to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

20. Time of Essence. Time is of the essence of this Declaration.

21. Exclusive Hotel Use; Height Restriction. So long as the Hotel Lot complies with the Hotel Operating Conditions:

(a) no Person, other than the Owner of the Hotel Lot, shall be permitted to construct or operate a Hotel within the Retail Lots or the View 72 Corporate Center, other than on the Hotel Lot; and

(b) The buildings located on the Retail Lots designated as Lots 1 through and including 7 and Lot 9 are limited to one story. The roofline height of any Building or Related Structure located on the Retail Lots designated as Lots 1 through and including 7 and Lot 9 on the Plat shall not exceed twenty feet (20') above the centerline elevation of 7200 South Street. Notwithstanding the foregoing provisions of this Section 21(b) to the contrary, any Building or Related Structure on such Lots can have (i) a parapet on any or all elevations which shall not exceed twenty-two feet (22') above the centerline of elevation of 7200 South Street, and (ii) one (1) architectural feature which shall not exceed thirty feet (30') above the centerline elevation of 7200 South Street on any or all elevations provided the width of such architectural feature shall not exceed more than twenty percent (20%) of the linear footage of the elevation on which the feature is attached. The twenty percent (20%) width restriction set forth in the preceding sentence is calculated at the widest point of the feature regardless of height. If a Building or Related Improvement is a multi-tenant structure, such Building and Related Improvements is limited to one (1) architectural feature on each elevation regardless of number of tenants in such Building or Related Improvement.

Notwithstanding the foregoing provisions of this Section 21 to the contrary, if at any time the Hotel Lot fails to comply with Hotel Operating Conditions, the restrictions set forth in this Section 21 shall be automatically terminate and shall be of no further force or effect. The provisions of this Section 21 shall not apply to Lot 10 as shown on the Plat.

22. Restriction on Restaurants. So long as the Hotel Lot complies with the Hotel Operating Conditions, no more than one (1) restaurant shall be operated on the Retail Lots shown as Lot 7 and Lot 9 on the Plat. In the event the Hotel Lot fails to comply with Hotel Operating Conditions, the restrictions set forth in this Section 22 shall be automatically terminated and shall be of no further force or effect. The provisions of this Section 22 shall not apply to Lots 1, 2, 3, 4, 5 or 6 as shown on the Plat.

23. No Public Dedication. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever. The provisions of this Section 23 shall not limit any dedication for a public use made on a plat or any other instrument of record.

(Signatures begin on following page)

EXECUTED the day and year first above written.

"Declarant"

VIEW 72 RETAIL, L.C., a Utah limited liability company, by its Managers

KC GARDNER COMPANY, L.C., a Utah limited liability company

By: [Signature]
Name: Christian Gardner
Its: manager

ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company

By: [Signature]
Name: CORY GUST
Its: Member/Manager

SOLELY FOR THE PURPOSES OF AGREEING TO THE PROVISIONS IN SECTION 21(A) HEREOF

"Arbor Gardner"

ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, by its Managers

KC GARDNER COMPANY, L.C., a Utah limited liability company

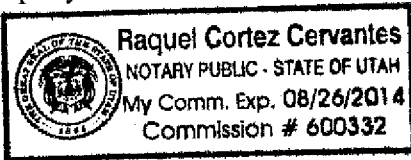
By: [Signature]
Name: Christian Gardner
Its: manager

ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company

By: [Signature]
Name: CORY GUST
Its: Member/Manager

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

On this 2nd day of October, 2012, personally appeared before me Christian Gardner, Manager of KC Gardner Company, L.C., a Utah limited liability company, a manager of View 72 Retail, L.C., a Utah limited liability company, on behalf of said company.



Raquel Cortez Cervantes
NOTARY PUBLIC

My Commission Expires: 08/26/2014 Residing at: Salt Lake City

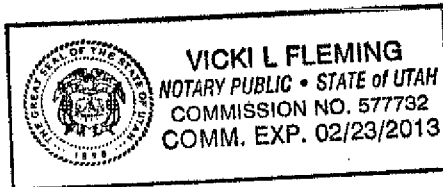
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 3rd day of October, 2012, personally appeared before me Cony Gust, Manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of View 72 Retail, L.C., a Utah limited liability company, on behalf of said company.

V Fleming
NOTARY PUBLIC

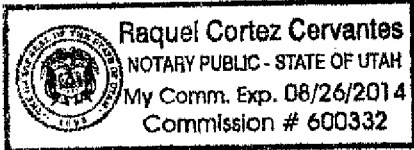
My Commission Expires:
2/23/13

Residing at: Draper, UT



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

On this 2nd day of October, 2012, personally appeared before me Christian Gardner, Manager of KC Gardner Company, L.C., a Utah limited liability company, a manager of Arbor Gardner Bingham Junction, L.C., a Utah limited liability company, on behalf of said company.



Raquel Cortez Cervantes
NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires: 08/26/2014

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

On this 3rd day of October, 2012, personally appeared before me Cony Gust, Manager of Arbor Commercial Real Estate L.L.C., a Utah limited liability company, a manager of Arbor Gardner Bingham Junction, L.C., a Utah limited liability company, on behalf of said company.

V Fleming
NOTARY PUBLIC
Residing at: Draper, UT

My Commission Expires:
2/23/13

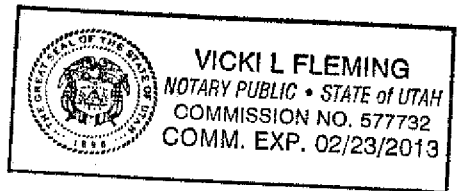


EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Retail Lots

ALL OF LOTS 1-7 AND LOT 9 OF THE VIEW 72 RETAIL SUBDIVISION PLAT
ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN THE OFFICE OF THE
SALT LAKE COUNTY RECORDER

Tax Parcel No(s): 21-26-200-017

EXHIBIT "B"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Hotel Lot

ALL OF LOT 8 OF THE VIEW 72 RETAIL SUBDIVISION PLAT ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER

Tax Parcel No(s): 21-26-200-017

EXHIBIT "C"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Arbor Gardner Parcel

ALL OF LOT 1 OF THE BINGHAM JUNCTION SAVAGE SUBDIVISION ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

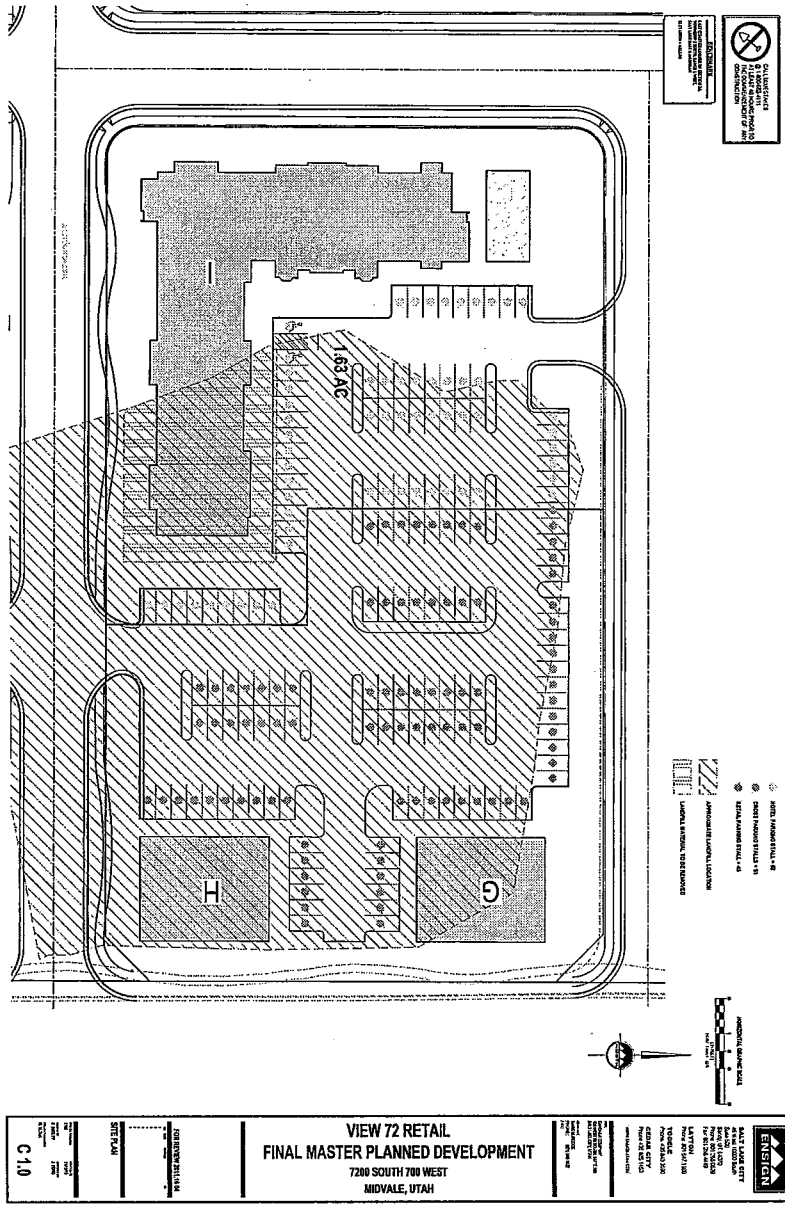
Tax Parcel No(s): 21-26-202-001

EXHIBIT "D"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Depiction of Parking Spaces



CONSENT OF LIENHOLDER

Wells Fargo Bank, National Association, as the holder of a lien encumbering the Property arising under (A) that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Arbor Gardner, L.C., a Utah limited liability company, as trustor, to the trustee named therein for the benefit of Lender, as beneficiary, which was recorded on August 31, 2005 in the official records of Salt Lake County, Utah as Entry No. 9478425 in Book 9182, beginning on Page 4552 (Loan No. 102322); (B) that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, as trustor, to the trustee named therein for the benefit of Lender, as beneficiary, which was recorded on November 20, 2007 in the official records of Salt Lake County, Utah as Entry No. 10281128 in Book 9539, beginning on Page 7100 (Loan No. 105400); (C) that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, as trustor, to the trustee named therein for the benefit of Lender, as beneficiary, which was recorded on August 19, 2010 in the official records of Salt Lake County, Utah as Entry No. 11014001 in Book 9850, beginning on Page 6159 (Loan No. 1002312); (D) that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated July 28, 2006, executed by Arbor/Gardner/Plum Sunset Hills, L.L.C., a Utah limited liability company, as trustor, to the trustee named therein for the benefit of Lender, as beneficiary, which was recorded on August 3, 2006 in the official records of Salt Lake County, Utah, as Entry No. 9801582, in Book 9331, beginning on Page 2847 (Loan No. 103580); and (E) that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by View 72, Retail, L.C., a Utah limited liability company, as trustor, to the trustee named therein for the benefit of Lender, as beneficiary, which was recorded on September 21, 2012 in the official records of Salt Lake County, Utah as Entry No. 11476485 in Book 10058, beginning on Page 5881 (Loan No. 1005639), in each case as amended, consents to the recording of this Declaration and subordinates its lien to this Declaration.

[signature page follows]

Wells Fargo Bank, N.A.

By: Mike Dolgarian

Name: Mike Dolgarian

Title: Vice President

State of Utah)
County of Salt Lake ss.

The foregoing instrument was acknowledged before me on October 3rd, 2012, by Mike Dolgarian, Vice Pres. of Wells Fargo Bank, National Association.

Shannon Lee Youngblood
Notary Public

4848-6658-8685, v. 12

