W2720377

WHEN RECORDED, PLEASE RETURN TO:

Founders Title Company 748 W. Heritage Park Blvd. #202 Layton, Utah 84041

Telephone: (801) 773-8584

Attn: Jim Morris

Affects Tax Parcel No. 15-562-0001; 0002; 0003

E# 2730377 PG 1 OF 12 Leann H. Kilts, WEBER COUNTY RECORDER 13-Apr-15 1122 AM FEE \$34.00 DEP SY

13-Apr-15 1122 AM FEE \$34.00 DEP SY REC FOR: FOUNDERS TITLE COMPANY - LAYTON ELECTRONICALLY RECORDED

space above for Recorder's use

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION (this "<u>Declaration</u>") is executed as of the <u>10</u> day of <u>April</u>, 2015, by Safe and Sound, LLC, a Utah limited liability company (the "<u>Declarant</u>").

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned agree as follows:

- 1. <u>Definitions</u>. As used in this Declaration, each of the following terms shall have the indicated meaning:
- 1.1. "Benefitted Parties" means, with respect to a Parcel, the Owners, Occupants and Mortgagees of that Parcel, and their respective employees, customers, guests, invitees and licensees
- 1.2 "<u>Easement Area</u>" means the real property located in Weber County, Utah, as depicted on the Survey "an easement for access right of way and utility right of way" and described more particularly as follows:

A part of the Northeast quarter of Section 35, Township 5 North, Range 2 West, Salt Lake Base & Meridian U.S. beginning at the Northeast corner of Lot 3, West Side Subdivision according to the official plat thereof recorded November 26, 2014 as Entry No. 2712104 in the office of the County Recorder of Weber County, State of Utah, said point being North 89°21'38" West 68.0 feet and North 0°50'18" East 1141.56 feet from the East Quarter of said Section 35, and running thence South 0°50'18" West 36.00 feet; thence North 89°14'30" West 400.57 feet; thence North 0°27'55" East 36.00 feet to the Northwest corner of Lot 2 of said Subdivision; thence South 89°14'30" East along the North line of said Subdivision 400.80 feet to the point of beginning.

- 1.3. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records,
- 1.4. "Mortgagee" means the mortgagee under a mortgage, or the beneficiary under a

deed of trust, recorded in the Official Records.

- 1.5. "Official Records" means the official records of the Weber County Recorder, State of Utah.
- 1.6. "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 Parcel or portion of any Parcel.
- 1.7. "Owner" means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in any portion of any Parcel. If there is more than one Owner of a Parcel at the time concerned, the obligations and liabilities of each such Owner for performance under, and compliance with, the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the Parcel concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.
- 1.8. "Parcel 1" means the real property located in Weber County, Utah described as follows:

Lot 1, WEST SIDE SUBDIVISION, according to the Official Plat thereof, recorded November 26, 2014 as Entry No. 2712104 in the Office of the County Recorder of Weber County, State of Utah 15-562-0001

1.9. "Parcel 2" means the real property located in Weber County, Utah, and described as follows:

Lot 2, WEST SIDE SUBDIVISION, according to the Official Plat thereof, recorded November 26, 2014 as Entry No. 2712104 in the Office of the County Recorder of Weber County, State of Utah

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1.10. "Parcel 3" means the real property located in Weber County, Utah, and described as follows:

Lot 3, WEST SIDE SUBDIVISION, according to the Official Plat thereof, recorded November 26, 2014 as Entry No. 2712104 in the Office of the County Recorder of Weber County, State of Utah

- 1.11. "Parcels" means Parcel 1, Parcel 2 and Parcel 3, collectively, and "Parcel" means either Parcel 1, Parcel 2 or Parcel 3, individually, where no distinction is required by the context in which such term is used. Declarant is the Owner of the Parcels.
 - 1.12. "Person" means a natural person or a legal entity.
- 1.13. "Survey" means the survey attached as Exhibit A, incorporated in this Declaration by this reference.
- 1.14. "Qualified Mortgagee" means a Mortgagee of which each Owner has been given written notice, including such Mortgagee's name and address.

1.15. "<u>Utility Easement Area</u>" means the real property located in Weber County, depicted on the Survey as "an easement for access right of way and utility right of way" and described more particularly as follows:

A part of the Northeast quarter of Section 35, Township 5 North, Range 2 West, Salt Lake Base & Meridian U.S. beginning at the Northeast corner of Lot 3, West Side Subdivision according to the official plat thereof recorded November 26, 2014 as Entry No. 2712104 in the office of the County Recorder of Weber County, State of Utah, said point being North 89°21'38" West 68.0 feet and North 0°50'18" East 1141.56 feet from the East Quarter of said Section 35, and running thence South 0°50'18" West 36.00 feet; thence North 89°14'30" West 400.57 feet; thence North 0°27'55" East 36.00 feet to the Northwest corner of Lot 2 of said Subdivision; thence South 89°14'30" East along the North line of said Subdivision 400.80 feet to the point of beginning.

2. Grant of Right-of-Way and Easements.

2.1. Access Right-of-Way and Easement.

- 2.1.1 Parcel 1 (but no other real property) shall have appurtenant thereto and shall be benefited by, and Parcel 2 and Parcel 3 shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress (without charge) on, over and across all portions of Parcel 2 and Parcel 3 used for vehicular and pedestrian ingress and egress including, but not limited to, the Easement Area.
- 2.1.2 Parcel 2 (but no other real property) shall have appurtenant thereto and shall be benefited by, and Parcel 3 shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress (without charge) on, over and across all portions of parcel 3 used for vehicular and pedestrian ingress and egress including, but not limited to, the Easement Area.
- 2.2. <u>Utilities Right-of-Way and Easement.</u> Parcel 1 (but no other real property) shall have appurtenant thereto and shall be benefited by, and Parcel 2 and Parcel 3 shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, data and telecommunications systems, sewer, storm drainage and all types of water) under, through and across the Utility Easement Area. In the event of necessity, the Parcel 2 Owner and the Parcel 3 Owner shall from time to time grant to the Owner of any portion of Parcel 1 an easement for the purposes set forth in the immediately preceding sentence under, through or across the Parcels in locations other than the Easement Area so long as such easement does not unreasonably interfere with locating a structure on Parcel 2 or Parcel 3, as applicable.
- 2.3 Sign Easement. Parcel 1 (but no other real property) shall have appurtenant thereto and shall be benefited by, an easement over the area on Parcel 3 cross-hatched on two areas on the Survey as the "Sign Easement" or any new signage easement area on Parcel 3 as determined by the Owner of Parcel 1

from time to time, in its sole discretion, to develop, construct, operate and maintain a monument, pylon or marquee sign depicting the business of the Parcel 1 Owner. In addition, the Owner of Parcel 1 shall have an easement to enter onto Parcel 3 to access such signage easement area. The Owner of Parcel 1 may from time to time change the look and character of such pylon signage in a manner compliant with governmental regulations. The Parcel 1 Owner, in its sole discretion, may grant to the Parcel 2 and Parcel 3 Owner licenses to also advertise its business on the Sign on such terms and conditions as it shall establish in its sole discretion (the "Other Signs"). The Other Signs shall be of a look and type acceptable to the Parcel 1 Owner, in its sole discretion. Upon written demand thereof, the costs of the installation, operation (including taxes and utility costs), maintenance, repair, replacement and operation of the Other Signs shall be promptly reimbursed to the Parcel 1 Owner, such costs to be in the Parcel 1 Owner's sole discretion.

- Access Code. From and after the date that the Owner of Parcel 2 improves its Parcel, the Owner of Parcel 1 shall have the option to affix a security code box that provides entrance into the storage facility located on its Parcel onto the area on Parcel 2 labeled on the Survey as the Keypad Easement, onto any building constructed on Parcel 2, or onto any area on Parcel 2 determined by the Parcel 1 Owner from time to time (the "Security Box"). Such Security Box shall be of a type and size reasonably acceptable to the Owner of Parcel 1, provided the Security Box shall not unreasonably interfere with the operation of the building on Parcel 2. The cost of installation and maintenance of such security box shall be the sole cost of the Owner of Parcel 1. In the event of such installation, the Owner of Parcel 1 shall have a (i) non-exclusive easement to enter onto Parcel 2 to install, operate, maintain, repair and replace the Security Box; (ii) an exclusive easement to use the Security Box for operation of and access to its storage facility; (ii) an irrevocable license to place and keep the Security Box on the building. The Security Box shall at all times remain the personal property of the Owner of Parcel 1.
- 2.5 <u>Benefitted Parties</u>. For the avoidance of doubt, the easements described in this Section 2 shall be for the use and benefit of the Benefitted Parties of Parcel 1 and, with respect to the easement described in Section 2.1.2, the Benefitted Parties of Parcel 2.
- 3. 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 Section 2 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. No Owner shall alter, reconfigure or change the configuration of the Easement Area including, without limitation, the construction of parking stalls.

4. Maintenance.

- 4.1 The Easement Area on such portion of Parcel 2 and Parcel 3 shall at all times be properly maintained by the Owner of Parcel 1 in a reasonably good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials, excepting any maintenance or repairs arising as a result of the grossly negligent actions or omissions of the Parcel 2 or 3 Owner. The Parcel 1 Owner shall bill the Parcel 2 and 3 Owner on a monthly or annual basis, in the discretion of the Parcel 1 Owner, for each Parcel's one-third (1/3rd) proportionate share of the costs and expenses of such maintenance, payable upon written demand.
- 4.2 The Owner of Parcel 2 and Parcel 3 shall each, at its own cost and expense, will maintain, or cause to be maintained, its Parcel in a safe, clean, attractive, first-class condition.

- Objectionable Uses. The Owner of Parcel 2 and Parcel 3 knowingly cause, permit or 5. allow any person, developer, occupant, user, employee, contractor, subtenant, assignee, occupant, guest, invitee, or customer to operate or develop Parcel 2 or Parcel 3 as: (i) a cigarette or smoke shop or any other shop or store the primary business of which is to sell tobacco products; (ii) a bar, tavern, cocktail lounge; (iii) an automotive maintenance or repair facility, warehouse; or (iv) as an entertainment or recreational facility, excepting therefrom a dance studio. In addition, The Owner of Parcel 2 and Parcel 3 shall not knowingly cause, permit or allow any person, developer, occupant, user, employee, contractor, subtenant, assignee, occupant, guest, invitee, or customer to (i) cause, maintain or permit a nuisance on the Property; (ii) display, sell, trade, exchange, or otherwise distribute or exhibit any goods, products, services, depictions, movies, films, signs, posters, performances, or demonstrations within any portion of the Property that would be unlawful under any federal, state, or local decency laws; (iii) permit or allow any form of illegal gambling or gaming, or operate an establishment in which legal gambling or gaming is conducted other than the incidental sale of state lottery tickets; (iv) permit or allow the manufacturing, sale, viewing, watching, showing, consumption, display, rental, purchase, or distribution of any sexually explicit, pornographic, lewd, or obscene material, including (without limitation) books, magazines, movies, prerecorded video, video or music discs, compact discs, blu-ray discs, video games, digital video discs, other video software, or any other media or sources, and/or any substitutes for, or items which are technical evolution of the foregoing items or any other item that is deemed pornographic or illicit.
- 6. <u>Duration</u>. This Declaration and each right-of-way, easement, covenant and restriction set forth in this Declaration shall be perpetual.
- 7. Not a <u>Public Dedication</u>. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purpose whatsoever, it being the intention of the undersigned that this Declaration be strictly limited to the purposes expressed in this Declaration.

8. Appurtenances to Parcels; Covenants Run with Land; Various Events.

8.1. <u>Appurtenances to Parcel 1</u>. Each right-of-way, easement, covenant and restriction created by this Declaration is an appurtenance to Parcel 1 (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

8.2. Covenants Run with Land; Various Events.

- 8.2.1. Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) shall (a) create an equitable servitude on Parcel 2 and Parcel 3 in favor of Parcel 1 (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other interest in any portion of the Parcel concerned, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.
- 8.2.2. <u>Transfer of Parcel</u>. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be bound by the covenants of such Owner contained in this Declaration, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Parcel, such transferring Owner shall be released and discharged from all obligations under this Declaration with respect to such Parcel that

accrue after (but not before) the date of recordation in the Official Records of the instrument effecting such transfer. The provisions of this Section 8.2.2 shall not apply to any Mortgagee existing at the time of the recording of this Declaration that enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

- 8.2.3. <u>Effect of Breach</u>. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner may have under this Declaration by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel, except as provided in <u>Section 8</u>.
- 8.2.4. <u>Identical Ownership</u>. The ownership of both Parcels by the same person shall not result in the termination of this Declaration.
- 8.2.5. <u>Priority of Declaration</u>. The interests in and rights concerning any portion of the Parcels held by or vested in the undersigned or any other person on or after the date of this Declaration (including, without limitation, any future Mortgage lien not now in existence) shall be subject and subordinate to this Declaration, and this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Declaration. As of the date of this Declaration, the undersigned are the sole Owners of the Parcels.
- 9. <u>Lien.</u> If the failure by the Owner of Parcel 2 or Parcel 3 to pay in a timely manner any sum when due under this Declaration is not cured within ten (10) days after written notice is given by the Parcel 1 Owner to the Parcel 2 Owner or Parcel 3 Owner, as applicable, such sum and any subsequent delinquencies may be secured by a lien against all or any portion of Parcel 2 or Parcel 3, as applicable. Such lien shall be evidenced by a notice of lien filed for record by the Parcel 1 Owner in the Official Records. A copy of such notice of lien shall be given by the Parcel 1 Owner to the Parcel 2 or Parcel 3 Owner, as applicable, within ten (10) days following recordation in the Official Records. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of Mortgages, but shall be subject and subordinate to (a) each Mortgage affecting Parcel 2 or Parcel 3 at the time such notice of lien is recorded and (b) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests or estates (whether recorded or unrecorded at the time such notice of lien is recorded) in or respecting a Parcel.

10. Mortgagee Protection.

- 10.1. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration.
- demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee at the latest address provided to such Owner by another Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of

non-monetary defaults, an additional thirty (30) days; <u>provided</u>, <u>however</u>, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

- 10.3. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by any other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with the Parcel.
- 10.4. <u>Recognition</u>. Any Owner shall, within fifteen (15) days after the request of another Owner, execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this <u>Section 9</u>.
- 11. Taxes. Each Owner will pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Parcels including any Common Areas and Restricted Common Areas located upon such Parcel. 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 Parcel and/or any improvements therein or thereon.
- 12. <u>Modification</u>. This Declaration and any right-of-way, easement, covenant or restriction contained in this Declaration may not be terminated, extended, modified or amended without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the Official Records of a written document effecting the same, executed and acknowledged by each Owner; <u>provided</u>, <u>however</u>, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.
- 12. Attorneys' Fees. If any Owner brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.
- 13. General Provisions. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This Declaration shall inure to the benefit of, and shall be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Owner. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

THE UNDERSIGNED Declarant has executed this Declaration on the respective dates set forth

below, to be effective as of the date first set forth above.

DECLARANT

SAFE & SOUND STORAGE, LLC, a Utah limited liability company

Name: Ryan Jacobs

Title: Member

By: G&G Properties, Inc., a Utah corporation, its

member

Name: Edward Gertge

Title: President

STATE OF UTAH)
COUNTY OF DAVIS) ss.
The foregoing instrument was acknowledged before me this \(\frac{\delta}{\text{day}} \) day of \(\frac{\text{Apric}}{\text{queric}} \), 2015, by Ryan Jacobs, a Member of Safe & Sound, LLC, a Utah limited liability company.
JIM C. MORRIS Notary Public • State of Utah Commission # 648757 COMM. EXP. 10-22-2015 Residing at: LANII COUNTY
My Commission Expires:
10, 22.13
STATE OF WIND) COUNTY OF DIVIS) ss.
The foregoing instrument was acknowledged before me this day of d
NOTARY PUBLIC JENNIFER MOSLEY 879595 GOMMISSION EXPIRES SEPTEMBER 18, 2018 STATE OF UTAH NOTARY PUBLIC NOTARY PUBLIC Residing at: DAVIS (a. A.
My Commission Expires:

CONSENT OF LIENHOLDER

Oxford Life Insurance Company, an Arizona corporation, as the holder of a lien encumbering the Property arising under that certain Deed of Trust and Assignment of Rents and Security Agreement recorded on November 14, 2005 as Entry No. 2141915, in the official records of Weber County, Utah, as amended, consents to the recording of this Declaration.

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	OXFORD LIFE INSURANCE COMPANY, an Arizona corporation By Male Mills Name: CHARLES C MILLER Title: Vp & CFO
State of Arizona) County of Maricopa)	Title: Vp · · · ·
The foregoing instrument wharles E. Miller the Vice corporation.	as acknowledged before me on April, 2015, by resident of Oxford Life Insurance Company, an Arizona
	Phyllis Gurstell Notary Public
	OFFICIAL SEAL PHYLLIS GURSTELL Notary Public - State of Arizona

EXHIBIT A

TO

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

Survey

See Attached

