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ALAN SPRIGGS, SUMMIT CO RECORDER  
2003 APR 14 15:48 PM FEE \$45.00 BY DMG  
REQUEST: SNELL & WILMER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT OF EASEMENTS FOR THE  
SUMMIT BUSINESS AND TECHNOLOGY PARK**

This Declaration of Covenants, Conditions and Restrictions and Grant of Easements for the Summit Business and Technology Park (the "**Declaration**") is made and entered into as of ~~March 17, 2003~~ ~~2002~~, by CUMMING INVESTMENT COMPANY, L.C., a Wyoming limited liability company ("**Declarant**").

**WITNESSETH:**

WHEREAS, Declarant is the owner of that certain real property in Summit County, Utah, known as the Summit Business and Technology Park, which is more particularly described on **Exhibit "A"** attached hereto (the "**Property**"); and

WHEREAS, Declarant intends to create on the Property a business and technology park development with certain common areas and common facilities, and desires to provide for the preservation of the values and amenities in said development and for the maintenance of said common areas and common facilities; and

WHEREAS, Declarant desires, by filing this Declaration of record with the Summit County, Utah, Recorder, to subject the Property and all buildings or improvements now or hereafter situated thereon, together with all appurtenances thereto, to the provisions of this Declaration; and

WHEREAS, Declarant desires and intends to hold, own, convey and lease the individual parcels on the Property, together with the common areas and common facilities thereon, subject to the covenants, conditions, and restrictions set forth herein.

NOW, THEREFORE, in consideration of the premises, Declarant hereby submits the Property to the provisions of this Declaration and declares, covenants and agrees that the Property and each part thereof shall be held, encumbered, occupied, built on and otherwise used and improved, maintained, leased, sold, conveyed and otherwise transferred subject to the following covenants, conditions, restrictions, reservations, easements, liens and charges, which shall (i) attach to and run with the land, (ii) be binding on the Property and all owners, lessees

and other parties having, acquiring or otherwise at any time possessing any right, title, or interest in or to the Property or any part thereof, or the right to use or occupy the Property or any part thereof, (iii) inure to the benefit of said owners, lessees and other parties, and (iv) be for the purpose of establishing a general plan for the operation and maintenance of the Property as an attractive business and technology park development.

## ARTICLE I Definitions

Section 1.1. Building. "Building" shall mean and include, but not be limited to, the portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and docks, storage tanks, canopies, enclosed malls and porches.

Section 1.2. Center. "Center" shall mean the Property as from time to time developed.

Section 1.3. City. "City" shall mean Coalville City, a Utah municipal corporation.

Section 1.4. Committee. "Committee" shall mean the Architectural and Development Control Committee.

Section 1.5. Common Areas. "Common Areas" shall mean such portions of the Property designed as Common Area on the Plat, and consented to by the Declarant or the Committee, and the area used for general signage for the Center.

Section 1.6. Common Areas Manager. "Common Areas Manager" shall mean, at the sole discretion of the Committee, either the Committee or any association (the "Association") organized in the future by the Owners of at least two-thirds of the total land area in the Property for purposes of fulfilling some or all of the obligations of the Common Areas Manager under this Declaration.

Section 1.7. Common Facilities. "Common Facilities" shall mean all of the following, which shall be located within easements and public rights-of-way at such time as such easements are created and such facilities are constructed and which are not located within a Parcel and used solely to benefit such Parcel:

- A. All drainage easements and their drainage systems.
- B. Landscaping.
- C. The irrigation system and associated pumps and hardware.
- D. Street signs.
- E. Street lights.

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F. Gutters.

G. Curbs.

H. Any other facility specifically designed as such on any recorded map for the Property.

Section 1.8. Declarant. "Declarant" shall mean Cumming Investment Company, L.C., or its successors and assigns, if such successors and assigns are the Owner or Owners of any portion of the Property and/or are designated by Cumming Investment Company, L.C., to perform the obligations of Declarant hereunder.

Section 1.9. Development Agreement. "Development Agreement" shall mean the Development Agreement between Declarant and the City dated \_\_\_\_\_, 2002, and recorded on \_\_\_\_\_, in Book \_\_, Page \_\_, in the official records of the Summit County, Utah, Recorder.

Section 1.10. Improvements. "Improvements" shall mean and include, but not be limited to, Buildings, out buildings, driveways, exterior lighting, fences, Landscaping, lawns, loading areas, parking areas, retaining walls, roads, screening walls, signs, utilities, walkways, berms and swales, and any repair or replacement thereof.

Section 1.11. Landscaping. "Landscaping" shall mean a space of ground covered with lawn, ground cover, shrubbery, trees and the like which may be complemented with earth berms, masonry or similar materials.

Section 1.12. Occupant. "Occupant" shall mean an entity or an individual which has purchased, leased, rented or otherwise legally acquired the right to occupy and use any Building or Parcel.

Section 1.13. Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title by deed, or equitable title by contract, to any Parcel which is part of the Property (or in the event of a sale/leaseback transaction or ground lease involving any Parcel, the lessee or lessees thereunder), but excluding those having an interest solely as security for the performance of an obligation.

Section 1.14. Parcel. "Parcel" shall mean any portion of the Property, except public rights-of-way and Common Areas and Common Facilities, which is conveyed, sold, or leased to an Owner, including any Parcel shown as a lot on any recorded map for the Property.

Section 1.15. Plat. "Plat" shall mean a recorded plat of the Property, as amended or supplemented from time to time, and consented to by the Declarant or the Committee.

Section 1.16. Roadway. "Roadway" shall mean the portion of the Property described on **Exhibit "B"** attached hereto, which shall be dedicated to Summit County or such other public entity designated by Summit County as a public roadway.

ARTICLE II  
Architectural and Development Controls

Section 2.1. Architectural and Development Control Committee. The Declarant shall appoint the initial three member Committee. Declarant shall have the right to appoint replacements for members of the Committee who resign during their respective terms of office, and to provide for staggered terms of the Committee. Except for the initial three members of the Committee, each individual member of the Committee shall serve for a term of not less than three years. Thereafter, the Committee shall be appointed by the vote of three fourths of all votes entitled to be voted, as described in **Section 8.5** hereof. The function of the Committee shall be to insure that all Improvements on the Property harmonize with existing surroundings and structures and meet the restrictions and requirements described in this Declaration, the Development Agreement, or as contained in the reasonable development guidelines to be established by the Committee.

Section 2.2. Submission to Committee. No Common Areas and Common Facilities or Improvements on a Parcel shall be constructed, and no alteration, painting, or refurbishing of the exterior of any Improvement shall be performed, unless complete plans and specifications therefor, meeting the criteria established by the Committee, have first been submitted to and approved by the Committee.

Section 2.3. Approval Procedure. Any plans or specifications submitted to the Committee shall be approved or disapproved by the Committee in writing within thirty days after submission. In the event the Committee fails to notify the applicant in writing of its disapproval within such thirty day period, such plans and specifications shall be deemed to have been approved by the Committee.

Section 2.4. Standards. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all Improvements, painting, or refurbishing of the exterior of any Improvement conform to and harmonize with the requirements, objectives and restrictions of this Declaration and the Development Agreement. The Committee shall not unreasonably withhold approval of any Improvements, painting or refurbishing of the exterior of the Improvements.

Section 2.5. Development Guidelines.

A. The Committee shall adopt such reasonable development guidelines as it deems necessary to inform Owners of the standards which will be applied in approving or disapproving proposed Improvements.

B. The development guidelines may amplify, but shall not be less restrictive than, the regulations and restrictions set forth in this Declaration and the Development Agreement, except as provided in **Section 2.9** hereof, and such development guidelines shall be binding upon all Owners, provided, however, that the Owners may modify the development guidelines in the manner described in **Section 8.5** hereof.

C. The development guidelines shall describe the rules and regulations of the Committee with respect to the submission of plans and specifications for approval, the time or times within which such plans and specifications must be submitted, and may state such other reasonable rules, regulations, policies, and recommendations which the Committee will consider in performing its duties hereunder.

**Section 2.6. Basis for Approval.** Review and approval by the Committee shall be based upon the standards set forth in this Declaration, the Development Agreement and in the development guidelines. The Committee shall consider not only the quality of the specific proposal but also its effect and impact on neighboring properties and on the Property.

**Section 2.7. No Liability for Damages.** The Committee and the individuals serving on the Committee shall not be liable for damages by reason of any action, inaction, approval, or disapproval made in good faith pursuant to this Declaration.

**Section 2.8. Declarant's Obligation.** Declarant hereby covenants in favor of each Owner that all Improvements erected by it and all Improvements of the Common Areas and Common Facilities made by it shall be architecturally compatible with one another, this Declaration, the Development Agreement and the development guidelines.

**Section 2.9. Variances.** In hardship cases, the Committee shall have the authority, but not the obligation, to grant variances from or the development guidelines, provided that the party requesting such variance obtains all necessary permits and variances, if any, from any governmental authority having jurisdiction thereof.

### ARTICLE III

#### Grant of Easements; Ownership of Common Areas and Facilities and Right of Inspection of the Property

**Section 3.1. Owner's Easement of Enjoyment.** Subject to the terms of this Declaration, every Owner and the Owner's tenants, lessees and invitees shall have a right and easement of enjoyment in and to the Common Areas and Facilities, including the right for ingress and egress on, over, across and through the Roadway to be dedicated as provided herein, and an easement for ingress and egress on, over, across and through all roadways shown on subsequent recorded maps for portions of the Property, for each Owner and its tenants, lessees and invitees, and said easement shall be appurtenant to and shall pass with title to each Parcel and the Property.

**Section 3.2. Title to Common Areas and Facilities.** Title to the Common Areas and Facilities shall be vested with the Common Areas Manager, for the benefit of every Owner subject to the terms described in this Declaration.

**Section 3.3. Limitation on Easement.** Each Owner's right and easement of use and enjoyment concerning the Common Areas and Common Facilities shall be subject to the following:

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A. Such right and easement shall not be exercised in any manner which substantially interferes with the purposes for which the Common Areas and Common Facilities are provided or with the right and easement of any other Owner with respect thereto.

B. The right of the City, Summit County, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property, to access and rights of ingress and egress over and across any Parcel, street, parking area, walkway, open area contained within the Property, or to Improvements, for purposes of providing police and fire protection, and providing any other governmental or municipal services.

C. The grant by the Common Areas Manager, of such utility and right-of-way easements as may be necessary or convenient to the Property and/or development of any portion thereof.

Section 3.4. Right of Inspection. During reasonable hours, after notice (except in the event of any emergency) and subject to the security regulations of the Occupants, the Committee and/or the Common Areas Manager or their respective authorized representatives shall have the right to enter upon and make reasonable inspections of any portion of the Property for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

#### ARTICLE IV Uses and Maintenance

Section 4.1. Compliance with Laws and Regulations. No portion of the Property may be used or occupied for any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any of the Property.

Section 4.2. Prohibited Uses. No portion of the Property may be used or occupied for any of the following uses, meat rendering, raising or grazing of horses, sheep, goats or other animals, auto yards, mine milling or ore processing.

Section 4.3. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any portion of the Property. The Property shall not be used for the storage of any property or thing that will cause the Property or any part thereof to appear in an unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental to the Owners of the Property. No substance, thing or material shall be kept or used upon the Property or any part thereof that will emit a foul, offensive, or obnoxious odor or that will unreasonably, and in a manner not consistent with normal manufacturing uses, disturb the peace, quiet, comfort, serenity or tranquility of the Occupants of the Property. No exterior speakers, horns, whistles, bells, sirens or other sound devices shall be located, used or placed on any portion of the Property, without the written consent of the Committee. No nuisance of any kind or description shall be permitted on the Property.

**ARTICLE V**  
**Improvements and Maintenance**

**Section 5.1. General.** Improvements on Lots shall be constructed strictly in accordance with the restrictions and requirements set forth in this **Article V** and the Development Agreement.

**Section 5.2. Temporary Structures.** No temporary building or other temporary structure shall be permitted on any portion of the Property; provided, however, that trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of permanent Improvements. Such structures shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Parcels, and shall be removed not later than thirty days after the date of abandonment or substantial completion, as determined by the Committee in its sole discretion, of the Improvements for which the temporary structure was used.

**Section 5.3. Completion of Construction.** Once begun, all Improvements shall be diligently pursued to completion.

**Section 5.4. Location of Buildings; Height of Buildings.**

- A. Buildings shall be set back in accordance with the Plat.
- B. Buildings' heights shall be as designated on the Plat.

**Section 5.5. Parking Set Backs.** All parking areas shall be set back as designated on the Plat.

**Section 5.6. Parking Requirements.** All parking areas shall satisfy all applicable requirements of the City.

**Section 5.7. Loading Service and Outside Storage.**

- A. Each Owner shall provide sufficient on site loading facilities to accommodate site activity. All loading movements, including turn around and maneuvering, shall be made off the Roadway or other public rights-of-way.
- B. Loading docks shall be located and screened so as to minimize visibility from the Roadway.
- C. Open storage shall be screened from the view of the Roadway or adjoining and adjacent Parcels and portions of the Property; provided, however, that all screen fences or walls shall be approved by the Committee.
- D. All security fences shall require the written approval of the Committee.

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E. Rubbish and garbage facilities shall not be visible from the Roadway and must be screened to minimize visibility from adjoining and adjacent Parcels and portions of the Property.

F. Screening of loading, service and outside storage areas may consist of a combination of earth mounding, Landscaping, walls and/or fences approved by the Committee.

**Section 5.8. Drainage.** All surface drainage systems, including, without limitation, landscaping and drainage detention ponds and systems, must be expressly approved in writing by the Committee prior to installation thereof. All detention areas shall be located within each individual Parcel and shall be designed so as to handle on each Parcel the drainage detention needs of the Improvements constructed on each Parcel.

**Section 5.9. Mechanical Equipment.** All mechanical equipment incidental to any Building, including roof mounted mechanical equipment, shall be enclosed or screened so as to be an integral part of the architectural design of the Building to which it is attached or related.

**Section 5.10. Signs.** All signs must be approved in writing by the Committee.

**Section 5.11. Maintenance.** Buildings, Landscaping, and other Improvements shall be continuously maintained by the Owners thereof so as to preserve a well-kept appearance. All parking areas and sidewalks shall be kept free from snow, ice and debris. All weeds on developed and undeveloped Parcels shall be cut back by the Owners of such Parcels from time to time to avoid an unsightly appearance from the Roadway. If the Common Areas Manager is not satisfied with the level of maintenance on a Parcel, he shall so notify the Owner in writing and the Owner shall have thirty days thereafter in which to restore its Parcel to a level of maintenance acceptable to the Committee in the exercise of its reasonable judgment. If the Owner has failed to bring the Parcel to a reasonably acceptable standard within such thirty day period, the Common Areas Manager may order the necessary work performed on the Parcel at the Owner's expense.

**Section 5.12. Utility Connections.** All utility lines, connections and installations shall be underground or shall be contained within a Building or fixture; provided, however, that any external transformers, meters and similar apparatus may be located outside a Building or fixture if they are located at ground level and screened so as to minimize visibility thereof from the Roadway and adjoining and adjacent Parcels or portions of the Property.

## ARTICLE VI

### Maintenance of Common Areas and Common Facilities

**Section 6.1. Authority.** The Common Areas Manager shall maintain and operate, or provide for the maintenance and operation of, the Common Areas and Common Facilities and the Improvements located thereon or related thereto and may reconstruct, repair, or replace any capital improvement thereon.



Section 6.2. General and Special Assessments.

A. The Common Areas Manager shall assess each Owner for the cost of maintenance and operation of the Common Areas and Common Facilities, and all real property taxes and assessments with respect thereto, and of the Improvements located thereon, including the direct costs thereof. Each Parcel shall be subject to a quarterly assessment equal to the total quarterly cost of maintenance and operation of such Common Areas and Common Facilities, multiplied by a fraction, the numerator of which is the land acreage of each such Parcel and the denominator of which is the total land acreage of all of the Property.

B. In addition to the quarterly assessments authorized above, the Common Areas Manager may levy, in any year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of a capital improvement upon the Common Areas and Common Facilities as may be necessitated by normal wear and tear and damage by the elements; provided that any such assessment shall be consented to in writing as set forth in **Section 8.5** hereof. All such special assessments shall be assessed in the same manner as provided in **Section 6.2(A)** hereof.

C. Declarant, for the portions of the Property owned by it, hereby covenants, and each Owner of any Parcel by acceptance of a deed, contract or lease therefor, whether or not it shall be so expressed in such deed, contract or lease, is deemed to covenant and agree to pay to the Common Areas Manager the assessments described in subparagraphs A and B of this Section. Such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, and shall also be the personal obligation of the person or entity who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, or unless such successors fail to obtain the clearance of such assessments by the Committee prior to acquiring an interest in the Property as described in subparagraph E below, provided that such successors obligation for such unpaid assessments shall not exceed the amount shown in the certificate described in subparagraph E below.

D. The quarterly assessments provided for herein shall commence on the first day of the month following the date of recording of the first deed, or first entering into any contract or lease, with respect to any portion of the Property. The first quarterly assessment shall be adjusted according to the number of months remaining in the calendar quarter. The Common Areas Manager shall estimate the amount of the quarterly assessment at least thirty days in advance of each quarterly assessment period and fix the due date for payment thereof. Written notice of the quarterly assessment shall be sent to every Owner subject thereto. At the end of the quarterly assessment period, the Common Areas Manager shall determine the exact cost of maintenance, taxes and assessments described in subparagraphs A and B of this Section, and shall charge or credit each

Owner in the next quarterly assessment for the difference between the actual expense and the estimated expense maintenance.

E. The Common Areas Manager shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Common Areas Manager setting forth whether the assessments on a specific Parcel have been paid and said certificate may be conclusively relied upon by the party requesting the same.

F. Each Owner and Occupant shall, upon reasonable notice to the Common Areas Manager, have access to and the right to inspect and copy all books and records of the Common Areas Manager relating to its duties hereunder. The costs of any such copies shall be borne by the Owner or Occupant requesting such copies.

G. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. If an Owner fails to pay an assessment pertaining to his Parcel before delinquent or fails upon demand to reimburse the Common Areas Manager for costs under **Section 5.11** hereof which relate to such Owner's Parcel, the Common Areas Manager may enforce the payment of the assessment, interest, costs and reasonable attorneys' fees, by taking either or both of the following actions, concurrently or separately:

1. Bring an action at law against the Owner personally obligated to pay the assessments and/or costs; or

2. Foreclose the lien against the Parcel in accordance with the then prevailing Utah law relating to mortgage foreclosures (including any right to recover any deficiency). The Common Areas Manager shall have the power to bid on any Parcel at the foreclosure sale and thereupon to acquire, hold, sell, lease, mortgage and convey the Parcel.

In the event any Owner fails to pay any assessment as provided herein and the Common Areas Manager is unable, after diligent foreclosure and collection effects, to collect the same, the Common Areas Manager may, without the prior consent or approval of the other Owners, reallocate such delinquent assessment as a special assessment among the other Owners in the manner described in **Section 6.2(A)** hereof.

H. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. The sale, transfer or lease of any Parcel shall not affect the assessment lien. The sale or transfer of any Parcel pursuant to foreclosure of any first mortgage or first deed of trust, or any proceeding in lieu thereof, shall discharge the lien of such assessments as to payments which became due prior to such sale or transfer but shall not discharge the liability of the Owner therefor, subject to the reallocation provisions contained in subparagraph G above. No other sale, transfer or lease shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

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**Section 6.3. Insurance.** The Common Areas Manager shall acquire and maintain insurance against insurable hazards with respect to the Common Areas and Common Facilities in amounts which reasonably protect the Common Areas Manager and the Owners from loss and/or liability arising from the hazards insured against. Such insurance coverage shall be written in the name of, and the proceeds thereof payable to, the Common Areas Manager, for the benefit of the Owners. Such insurance may include, but shall not be limited to, fire insurance, comprehensive liability insurance and workmen's compensation insurance. Premiums for insurance such carried by the Common Areas Manager shall be a common expense included in the quarterly assessments or charges made by the Common Areas Manager.

**Section 6.4. Replacement or Repair of Common Areas and Common Facilities.** Damaged or destroyed Common Areas and Common Facilities, or the property of the Common Areas Manager used in connection with the Common Areas and Common Facilities, shall be repaired or replaced by the Common Areas Manager utilizing insurance proceeds therefor. In the event there are no insurance proceeds or the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Common Areas Manager may make a special assessment under **Section 6.2(B)** hereof to cover such cost (provided that a vote of a majority of the votes entitled to be voted shall be entitled to approve such special assessment). In the event the Owners fail to approve an assessment for such repair or replacement, the Common Areas Manager shall not be required to make such repair or replacement at its expense.

## ARTICLE VII

### Limitation of Restrictions on Declarant

**Section 7.1. Declarant's Work.** Declarant is undertaking the work of developing a business and technology park and incidental Improvements on the Property. Each Owner acknowledges that the completion of that work and the sale, rental and other disposal of the Property is essential to the establishment and welfare of the Property as a business and technology park. Declarant shall not unreasonably interfere with the activities of other Owners and Occupants in the completion of that work.

**Section 7.2. Declarant's Exemptions.** In order that Declarant's work may be completed and the Property be developed, nothing herein shall:

A. Prevent Declarant, its contractors, or subcontractors, from doing on the Property or any Parcel, whatever is reasonably necessary or advisable in connection with the completion of said work;

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a business and technology park and disposing of the Property in parcels by sale, lease or otherwise; or

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C. Prevent Declarant from maintaining such sign or signs on any part of the Property as may be reasonably necessary for the sale, lease, or disposition thereof.

Section 7.3. Easements. There is hereby created a non-exclusive easement upon, across, over and under all of the Property (excluding Buildings) for ingress and egress to and from, and installing, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, telephone, electricity, gas and television cables. In the event that any utility company furnishing a service covered by the foregoing general easement requests a specific easement by separate recordable instrument, Declarant and/or the Common Areas Manager shall have the right to grant such easements as agent for the owner of the Property.

#### ARTICLE VIII General Provisions

Section 8.1. Incorporation of Terms of Development Agreement. Each Owner, its successors or assigns, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree: (i) to take title to, hold, own, convey, and lease such Owner's Parcel subject to all of the terms and provisions of the Development Agreement; and (ii) to perform all obligations of such Owner arising under the Development Agreement. This **Section 8.1** may not be amended without Declarant's prior written consent.

Section 8.2. Enforcement. Declarant, the Common Areas Manager, the Committee, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and the Development Agreement. Failure of Declarant, the Common Areas Manager, the Committee, or any Owner to enforce any covenant or restriction contained in this Declaration or the Development Agreement shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.3. Severability. The invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 8.4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and consecutive periods of ten years, to a maximum of 99 years unless terminated at the end of any such period.

Section 8.5. Appointment of Committee, Modifications, Consents, Terminations and Amendments. Except as otherwise provided herein with regard to the appointment of the Committee (as set forth in **Section 2.1** hereof), any modification of the development guidelines (as set forth in **Section 2.5** hereof), consent to special assessment (as set forth in **Section 6.2** hereof), or any amendment of **Section 8.1**, amendments of this Declaration, or termination of this Declaration, shall take place only by the affirmative vote of three fourths of all votes entitled to be voted. Each Owner, including Declarant, shall have one vote for each acre of land, or any

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fraction over fifty percent (50%) of an acre, owned by it. Any termination or amendment to this Declaration must be recorded.

**Section 8.6. No Severance of Right From Ownership of a Parcel.** No purchaser or Owner of any Parcel shall convey his interest under this Declaration or in any Association described in Section 1.5 hereof, and no member of the Association shall convey, transfer, sell, assign or otherwise dispose of his membership rights in the Association, without at the same time conveying, selling and transferring his interest in the Parcel to which his membership attaches, and the membership shall be transferred only to a new Owner or purchaser of the Parcel to which membership is attached.

**Section 8.7. Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

**Section 8.8. Consent to Recordation of Plat.** At any time or from time to time upon the request of Declarant, each Owner shall consent in writing to the recordation of a plat for the Property, and hereby irrevocably constitutes Declarant as his attorney-in-fact (which power of attorney shall be deemed coupled with an interest) for purposes of executing such plats on behalf of each Owner, provided that such plat shall not change the location or boundaries of any Owner's Parcel or the Roadway. Such a plat may, however, extend the Roadway.

**Section 8.9. Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public purposes whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

**Section 8.10. Injunctive Relief.** In the event of any violation or threatened violation by any Owner or occupant of any portion of the Property or any of the terms, covenants and conditions contained in this Declaration and the Development Agreement, in addition to the other remedies herein provided, the Declarant and any or all of the other Owners shall have the right to enjoin such violation in a court of competent jurisdiction.

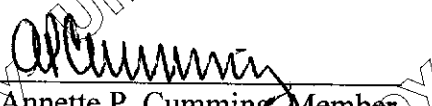
**Section 8.11. Attorneys' Fees.** In the event that any party hereof brings or commences legal proceedings to enforce any of the terms of this Declaration against any other party with an interest in the Property, the successful party in such action shall then be entitled to receive and shall receive from the defaulting party or parties a reasonable sum as attorneys' fees and costs, to be fixed by the court in the same action.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of March 19,  
~~2002.~~ 2003.

**CUMMING INVESTMENT COMPANY, L.C.,**  
a Wyoming limited liability company

  
Ian M. Cumming, Member

  
Annette P. Cumming, Member

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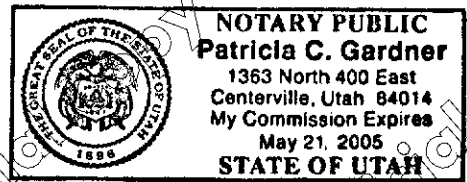
STATE OF Utah )

COUNTY OF Davis ) : ss.

On this, the 17 day of March, ~~2002~~<sup>2003</sup>, before me, the undersigned officer, personally appeared Ian M. Cumming, a member of Cumming Investment Company, L.C., a Wyoming limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purpose therein contained and in the capacity therein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Patricia C. Gardner  
Notary Public



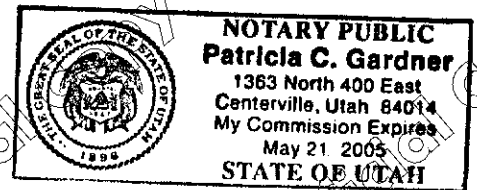
STATE OF Utah )

COUNTY OF Davis ) : ss.

On this, the 17 day of March, ~~2002~~<sup>2003</sup>, before me, the undersigned officer, personally appeared Annette P. Cumming, a member of Cumming Investment Company, L.C., a Wyoming limited liability company, and that she, being authorized so to do, executed the foregoing instrument for the purpose therein contained and in the capacity therein stated.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Patricia C. Gardner  
Notary Public



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**EXHIBIT A  
Property**

A tract of land located in the South half of Section 4 and in the North half of Section 9, Township 2 North Range 5 East, Salt Lake Base and Meridian and having a basis of bearing taken as South between the Northwest corner and the Southwest corner of said Section 9, described as follows:

BEGINNING at a point which is North 88°46'24" West 450.52 feet along the Section line from the North quarter corner of Section 9, Township 2 North Range 5 East, Salt Lake Base and Meridian, a monument in concrete (said point of beginning being a rebar and cap monumenting the Southeast corner of Cedar Crest Subdivision) and running thence North 17°15'06" East 420.73 feet along the Easterly boundary of said subdivision to a rebar and cap monumenting an angle point on the Easterly boundary of said subdivision; thence North 22°33'41" East 580.03 feet along the Easterly boundary of said subdivision to a rebar and cap monumenting an angle point on the Easterly boundary of said subdivision; thence North 35°37'26" East 201.26 feet along the Easterly boundary of said subdivision to a rebar and cap monumenting an angle point on the Easterly boundary of said subdivision and the center of section line; thence North 00°43'44" East along the center of section line 214.59 feet to the Northwest corner of the Southwest quarter of the Southeast quarter of Section 4; thence South 88°32'37" East along the quarter-quarter section line 1329.33 feet to the Northeast corner of the Southwest quarter of the Southeast quarter of Section 4; thence South 00°23'40" West along the quarter-quarter section line 1320.13 feet to the Southeast corner of the Southwest quarter of the Southeast quarter of Section 4; thence North 88°46'25" West along the Section line 539.07 feet to the crest of a cedar ridge; the following 3 calls being along said crest: 1) thence South 26°35'09" West 245.46 feet; 2) thence South 18°16'04" West 307.89 feet; 3) thence South 31°09'41" West 471.75 feet; thence North 50°56'01" West 301.69 feet to a rebar and cap monumenting the Northeast corner of that certain parcel of land conveyed to CRA Enterprises Investments, L.C., by that certain Special Warranty Deed recorded January 14, 2000 as Entry No. 557193 in Book 1303 at Page 1079 of the official records in the office of the Summit County Recorder; the following 8 calls being along the Northerly boundary of the CRA Parcel: (Note: a bearing rotation of 2°06'19" to the right has been applied) 1) thence North 48°49'51" West 188.47 feet to a rebar and cap; 2) thence North 42°54'15" West 57.25 feet to a rebar and cap; 3) thence North 48°49'51" West 96.07 feet to a rebar and cap; 4) thence South 86°48'09" West 73.64 feet to a rebar and cap; 5) thence South 31°30'39" West 221.86 feet to a rebar and cap; 6) thence South 56°58'29" West 108.74 feet to a rebar and cap; 7) thence South 52°56'29" West 115.32 feet to a rebar and cap; 8) thence South 29°37'11" West 327.46 feet to the Northerly line of an existing road (30 feet perpendicular from the centerline of said road); thence North 63°34'07" West 296.43 feet along said line; thence along the arc of a curve to the left 753.44 feet (radius 483.56 feet, chord bearing South 66°06'08" West 679.51 feet) along said line; thence South 15°45'06" West 29.69 feet, along said line to the Southerly line of the Northwest quarter of the

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Northwest quarter of Section 9; thence North 88°49'44" West 687.48 feet, along said line to the edge of a rock ledge; thence North 43°38'35" East 64.40 feet, along said ledge to a nail set in ledge; thence North 31°10'07" East 57.35 feet, along said ledge; thence North 17°53'08" East 176.08 feet, along said ledge; thence North 36°16'43" East 650.31 feet, along said ledge; thence North 33°39'13" East 334.86 feet, along said ledge; thence North 19°30'51" East 257.91 feet, along said ledge to the Northerly line of Section 9, said line also being the Southerly boundary line of Cedar Crest Subdivision); thence South 88°46'24" East 1021.86 feet, along said Section line to the POINT OF BEGINNING.

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Exhibit B  
Roadway

A 60 foot wide strip of land in the North half of Section 9, and the South half of Section 4, Township 2 North, Range 5 East, Salt Lake Base and Meridian. Said parcel being described as follows:

Beginning at a point on the existing boundary of Summit Business and Technology Park property, and the centerline of the existing roadway, said point also being South 981.72 feet, and East 1265.03 feet from the North 1/4 Corner of Section 9, Township 2 North, Range 5 East, Salt Lake Base and Meridian (Basis of Bearing: N 89°43'06" W, 2673.95 feet from said North 1/4 corner of said Section 9 to the NW corner of Section 9), and running thence;

143.73 feet along a curve to the left along said centerline (R=1000.00', Delta=8°14'07", T=71.99', CH=143.61', CHB=N40°33'40"E); thence

N 36°26'36" E 465.60 feet along said centerline to a tangent curve to the right; thence

210.48 feet along the arc of the curve to the right and said centerline (R=300.00', Delta=40°11'56", T=109.78', CH=206.19', CHB=N56°32'34"E); thence

N 76°38'32" E 305.22 feet along the centerline to a tangent curve to the left; thence

274.46 feet along the arc of the curve to the left and said centerline (R=300.00', Delta=52°25'02", T=147.67', CH=264.98', CHB=N50°26'01"E); thence

N 24°13'30" E 1600.69 feet along said centerline to the North boundary of the Summit Business and Technology property. And

○ A circle of Radius = 83.00', the center of which is on the above described centerline and S24°13'30" W 105.52 feet from the North boundary of the Summit Business and Technology property.

Area: 194,483 sq. ft. 4.46 acres

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