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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
TALON GROUP  
BY: NEH, DEPUTY - WI 25 P.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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Attn: Glenn T. Sherman, Esq.

27-29-377-002-0000

**DECLARATION OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

THE TALON GROUP  
JB# 203856

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19203-902



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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Attn: Glenn T. Sherman, Esq.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 23 day of April, 2007 by RIVERTON MEADOWS PARTNERS, LLC, a Nevada limited liability company (the "Declarant").

### RECITALS

A. Declarant is the owner of that certain real property situated in Salt Lake County, State of Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. The Property currently consists of one legal parcel and is shown on the Site Plan attached hereto as Exhibit "B" and made a part hereof (the "Site Plan"). Declarant has the right, without the consent of any other party, to change the Site Plan from time to time as provided in Section 4.1 below, including without limitation as shown on the proposed modified site plan for the Property attached hereto as "Exhibit B-1" and made a part hereof (the "Proposed Modified Site Plan").

C. Lowe's HIW, Inc., a Washington corporation ("Lowe's") and Declarant have previously entered into that certain Easements, Covenants, Conditions and Restrictions dated July 29, 2005, and recorded on July 29, 2005, in the Official Records of the County Recorder of Salt Lake County, Utah (the "Official Records") as Instrument No. 944-6111, in Book 9166, Pages 4403-4467, inclusive (said instrument, as it may hereafter be amended, is referred to herein as the "ECC&Rs"). References herein to "Lowe's" shall include the successors and assigns of Lowe's ownership of the Lowe's Parcel under the ECC&Rs. This Declaration is subject and subordinate to the ECC&Rs.

D. Fee simple title to all or portions of the Property may from time to time hereafter be transferred to third parties, and prior thereto, Declarant desires (i) to establish and subject each and every portion of the Property to the covenants, conditions, restrictions, reservations, servitudes, assessments, liens and charges hereinafter set forth, and (ii) to provide for the use and maintenance of the Property in an integrated fashion, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is declared, on behalf of all present and subsequent Owners (as hereinafter defined), that the Property and all present and future owners and occupants of the Property shall be and hereby are subject to the covenants, easements, restrictions, reservations, servitudes, assessments, liens and conditions hereinafter set forth in this Declaration, so that the Property shall be maintained, kept, sold and used in full compliance with and subject to this Declaration as follows:

## AGREEMENTS

1. Definitions. For purposes hereof:

1.1 The following persons and entities shall be individually referred to as an "Owner" and collectively as the "Owners": The fee owner of a Parcel and the fee owner of any other Parcel(s) that may be annexed into the Property from time to time as allowed under this Declaration, and any and all successors or assigns of such persons or entities as the owner or owners of fee title to all or any portion of the Parcels covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Parcels.

1.2 The following shall individually be referred to herein as a "Parcel" and collectively as the "Parcels": the parcel of real property now constituting the Property, any Parcels annexed into the Property as allowed under this Declaration, and if a Parcel is subdivided or modified pursuant to a lot line adjustment, then each of the resulting legal parcel(s) created as a result thereof shall be a "Parcel" hereunder.

1.3 The term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective agents, employees, contractors, customers, invitees, licensees and concessionaires of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

1.4 The term "Common Area" means the "Common Area" (as defined in the ECC&Rs) located on the Property, excluding any "Common Area" (as defined in the ECC&Rs) which are located on the Lowe's Parcel (as defined in the ECC&Rs). The Common Area (as that term is used herein) shall be subject to increases, decreases and modifications as and to the extent allowed under the ECC&Rs.

1.5 The term "Annexed Parcel" shall mean all or any portion of the property or properties adjacent to the Property that Declarant elects to annex into the Property at any time and from time to time. If Declarant ever elects to annex a Parcel or Parcels into the Property such that same become an Annexed Parcel, then the Annexed Parcel shall be included in the definition of the Property under this Declaration. Until Declarant elects to annex the Annexed Parcel into the Property, such Annexed Parcel shall not be considered a part of the Property. If Declarant elects to annex the Annexed Parcel into the Property, as a condition thereto, the Annexed Parcel shall be subject to this Declaration.

1.6 The term "Declarant" shall mean Riverton Meadows Partners, LLC, a Nevada limited liability company ("Riverton") or its successors and assigns duly authorized under this Declaration. Any right hereunder granted to or reserved in favor of Declarant also runs in favor of the agents, employees and contractors of Declarant designated by Declarant. If Riverton transfers its fee simple interest in any portion of the Property and concurrently therewith expressly assigns its interest as Declarant to a transferee pursuant to a document recorded in the Official Records, then the term "Declarant" shall thereafter mean both Riverton (for so long as Riverton owns any Parcel) and such transferee. Any Owner who is expressly assigned Declarant's interests as Declarant hereunder pursuant to a document recorded in the Official Records, in accordance with the terms and conditions of this Declaration, shall also have the right to assign its interest as Declarant to any subsequent transferee of its fee interest in a Parcel if done expressly and concurrently with the transfer of such fee interest pursuant to a document recorded in the Official Records. If the approval or consent of Declarant is required hereunder at any time that Declarant consists of more than one Owner, then unless the Owners constituting Declarant otherwise agree in writing, such approval or consent shall require the unanimous approval or consent of all Owners then constituting Declarant. Any Owner constituting Declarant shall have the rights of Declarant hereunder only for so long as such Owner continues to own fee interest in at least one Parcel. If there is no longer a "Declarant" of the "Property," then any matters to be approved by Declarant shall then require the approval of those Owners having the right to amend this Declaration pursuant to Paragraph 11.2 hereof.

1.7 Any capitalized terms used herein which are defined in the ECC&Rs shall have the same definitions as are provided in the ECC&Rs unless expressly redefined herein.

2. Easements.

2.1 The easements, rights and restrictions granted and established by the ECC&Rs (and which are binding upon and for the benefit of the Property) shall continue to be binding upon and inure to the benefit of the Parcels and each individual Parcel under this Declaration, except as may be modified herein with respect to the Property.

2.2 Notwithstanding anything to the contrary in Section 2.6 of the ECC&Rs with regard to temporary construction easements, as between and among the Parcels of the Property, only Declarant shall have the benefit of such temporary construction easements over any Parcel in the Property.

2.3 Each Owner grants to each other Owner of a Parcel in the Property non-exclusive reciprocal easements for parking on the Common Areas of the granting Owner's Parcel as may be designated for parking from time to time (the "Reciprocal Parking Easements"); provided, however, that notwithstanding any such Reciprocal Parking Easements, each Owner shall comply with the provisions of Section 4.1(B) of the ECC&Rs requiring each Parcel to be self-supporting as to parking as provided therein. Each grantee of the non-exclusive Reciprocal Parking Easements may permit from time to time its Permittees to use such Reciprocal Parking Easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the Reciprocal Parking Easements in excess of use contemplated at the date of creation of the Reciprocal Parking Easements. The Reciprocal Parking Easements shall be appurtenant and not in gross.

3. Maintenance and Operation.

3.1 Common Area. Declarant shall act as "Developer" (as such term is defined in the ECC&Rs) under the ECC&Rs, and after initial construction of the Common Area on each Parcel, Declarant shall maintain, repair and replace the Common Area on the Property in accordance with the ECC&Rs. The costs so incurred by Declarant, the cost of any agent appointed by Declarant and Lowe's to maintain jointly the Common Area and the "Common Area" as defined in the ECC&Rs located on the Lowe's Parcel (as such term is defined in the ECC&Rs) which is allocable to the Property, and the cost of maintaining, repairing and replacing the detention basin and other portions of the Storm Drainage System (as such term is defined in the ECC&Rs) serving the Property and which are not located on the Property or the Lowe's Parcel, as more fully described in Section 5.1(C) of the ECC&Rs, which are allocable to the Property, are collectively referred to as the "Common Area Expenses." Each Owner of a Parcel shall pay Declarant its "Proportionate Share" (as defined below) of the Common Area Expenses. The term "Proportionate Share" as used herein shall mean a fraction, the numerator of which is the land area of an Owner's Parcel, and the denominator of which is the land area of all Parcels constituting the Property. Each Owner shall pay Declarant its Proportionate Share of the Common Area Expenses within thirty (30) days following receipt of an invoice with reasonable documentation of such costs.

3.2 Common Area Maintenance and Operation. Declarant shall also operate and insure the Common Area within the Property and the costs so incurred by Declarant are included in the Common Area Expenses. Declarant's obligations to operate, insure, maintain, repair and replace the Common Area on the Property shall include, without limitation, the following:

(a) Insurance. Insuring the Common Area within the Property (with not less than the minimum coverages and liability limits as are required under the ECC&Rs).

(b) Maintenance under the ECC&Rs. All maintenance, repairs and replacements required to be made to the Common Area under the ECC&Rs or otherwise needed to keep the Common Area in good condition and repair.

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(c) Trash and Debris. Periodic removal of all trash and debris, including vacuuming and broom or blower sweeping, to the extent necessary to keep the Common Area in a good, clean and orderly condition. The cost of the removal of trash and debris from the Common Area shall be part of the Common Area Expenses, although the cost of removal of trash and debris from within buildings or from dumpsters that are not for the common use of all occupants of the Property shall be excluded from Common Area Expenses and shall be the separate responsibility of the Owner of the Parcel on which such building and/or dumpsters are located.

(d) Lighting. Cleaning, maintaining, repairing and replacing Common Area lighting facilities, including, without limitation, light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers. Under canopy or building lighting shall not be considered a Common Area maintenance item, but shall be maintained by the respective Owner of that Parcel. If any Owner or its Permittees shall remain open for business during all or any of the hours between 10:00 p.m. and 8:00 a.m. ("after hours"), then such Owner(s) shall from time to time when billed by Declarant, but not more often than once each month, pay to Declarant a pro rata share of the cost of after hours lighting of the parking areas. Each Owner's pro rata share thereof shall be reasonably determined by Declarant based on Declarant's determination of the number Permittees operating after hours, the size of the space occupied by such Permittees and the length of time of such after hours operations. Notwithstanding anything to the contrary in the foregoing, if the ECC&Rs require the Common Area to be lit prior to 8:00 a.m. or after 10:00 p.m., then such earlier or later hours as may be required by the ECC&Rs shall not be considered "after hours." Declarant shall have the right, at its sole option, to install a separate meter or submeter to measure after hours lighting, in which case the cost of the meter and/or submeter shall be include in Common Area Expenses.

(e) Common Utility Lines. Cleaning, maintaining, repairing and replacing any and all utility lines serving the Common Area and paying the cost of usage of utilities serving the Common Area.

(f) Supervisory Personnel. Providing professional supervisory and/or security personnel for the Common Area, if Declarant reasonably determines same is/are required.

(g) Compliance With Applicable Law. Operating and maintaining the Common Area in compliance with all applicable governmental laws, rules, regulations, ordinances and the provisions of this Declaration.

3.3 Compliance with Other Obligations under ECC&Rs. Except as provided in Paragraphs 3.1 and 3.2 above, each Owner shall be required to separately comply with each of its obligations under the ECC&Rs, including, without limitation, payment of taxes and assessments relating to its Parcel, maintaining insurance for its Parcel, maintaining, repairing and replacing buildings and related improvements on its Parcel, complying with its SWPP Obligations (except to the extent same are to be performed by Declarant in Paragraphs 3.1 and 3.2 above), complying with all development guidelines, height restrictions, signage limitations, landscaping and set back requirements set forth in the ECC&R's, providing and maintaining the parking ratio for any Parcel and for the Property as a whole as required by the ECC&R's, providing trash removal from within buildings on its Parcel, and supplying of utilities to its Parcel, etc.

3.4 Rules and Regulations. Declarant may from time to time promulgate, enforce and modify reasonable rules and regulations for Property and such reasonable rules and regulations shall be binding upon all Owners, upon not less than fifteen (15) days prior written notice to any Owner who has provided its address for notices as provided in Paragraph 12.11 below.

#### 4. Site Plan Modification; Improvements.

4.1 Site Plan Modification. Declarant shall have the right, without the consent of any other Owner of a Parcel and to the extent permitted by the ECC&Rs, to amend the Site Plan for the Property;

provided, however, that after conveyance of fee title to any Parcel to a party other than Declarant (such party an "Acquiring Owner" and such Parcel a "Transferred Parcel"), Declarant shall not modify the Site Plan as to the Transferred Parcel, except that Declarant may modify any access thereon to the extent permitted by the ECC&Rs in a manner that does not materially adversely affect the Transferred Parcel. Declarant shall from time to time record amendments to this Declaration to show actual modifications made to the Site Plan from time to time.

4.2 Plan Approval. Any improvements to be constructed on any Transferred Parcel (or, if already constructed, altered or added to) shall be subject to Declarant's review and approval, in its reasonable discretion, of plans and elevations showing the layout and design of the building and all other improvements and Common Area to be constructed on the Transferred Parcel and their location on the Transferred Parcel, including without limitation landscaping, hardscape and all signage to be constructed on such Parcel (or altered or added to, as the case may be), together with a utility plan for the Transferred Parcel (the "Plans"). Such Plans shall be in conformance with the ECC&R's, this Declaration (including the Site Plan), the elevations and design guidelines attached hereto as Exhibit "C" (the "Design Guidelines"), unless otherwise approved by Declarant, any other recorded documents, and all applicable governmental laws, rules, regulations, ordinances, entitlements (including without limitation any applicable conditions of approval) and valid permits (collectively, "Laws"). If an Acquiring Owner of a Transferred Parcel has not obtained Declarant's approval of Plans pursuant to this Declaration prior to acquiring the Transferred Parcel, then not later than thirty (30) days after acquiring the Transferred Parcel, the Acquiring Owner shall submit the Plans to Declarant for approval. Declarant shall have up to thirty (30) days after receipt of the Plans to review and approve or comment on the Plans. If Declarant does comment on the Plans, such comments shall be in writing, and the Acquiring Owner and Declarant shall cooperate with each other and use reasonable efforts in an attempt to reach agreement on the Plans. Within 10 days after receipt of Declarant's comments, the Acquiring Owner shall revise the Plans and re-submit them to Declarant, and Declarant shall have 10 days after receipt of such revised Plans within which to approve or further comment upon the revised Plans. This procedure shall continue until the Plans, as revised by Acquiring Owner, are acceptable to Declarant and Acquiring Owner. Declarant shall indicate its approval of the Plans by initialing each page of one set of the Plans, and such Plans as approved by Declarant shall be the "Approved Plans." Notwithstanding Declarant's review and approval of the Plans, the Acquiring Owner requesting such approval shall be solely responsible for ensuring that the improvements shown thereon are constructed in compliance with the ECC&Rs, this Declaration, the Design Guidelines, any other recorded documents, and all applicable Laws. Each Acquiring Owner hereby agrees to indemnify, defend and hold Declarant harmless from and against any and all claims, demands, actions, liabilities, costs, expenses and damages arising out of, in connection with or resulting from the design and construction of improvements on such Owner's Parcel. Nothing herein shall obligate Declarant to inspect the improvements constructed by Acquiring Owner or any portion thereof or to notify Acquiring Owner of faulty construction thereof or a deviation from the Approved Plans or release Acquiring Owner from any of its obligations hereunder.

4.3 Construction. The Acquiring Owner shall, at its sole cost and expense, obtain all necessary private approvals (including without limitation the consent of any Consenting Owner(s) (as defined in the ECC&Rs), if required under the ECC&Rs), governmental approvals, entitlements, permits and any other approvals needed for the work shown on the Approved Plans (the "Acquiring Owner's Work"). Construction of the Acquiring Owner's Work, once commenced, shall proceed with due diligence in conformance with the Approved Plans, the ECC&Rs, this Declaration, any other recorded documents, any approvals obtained as provided above and all applicable Laws. Without limitation, the provisions of Section 4.5 of the ECC&Rs shall be in effect with respect to any construction by an Acquiring Owner on a Transferred Parcel, notwithstanding that Lowe's may not yet have opened for business.

5. Management.

5.1 Management Fee. Declarant shall have the right to charge each Owner a reasonable management fee (whether payable to Declarant and/or to a third party designated by Declarant) for supervision and overhead (the "Management Fee"), and the amount of such Management Fee may vary from Parcel to Parcel as reasonably determined by Declarant. The Management Fee shall initially be an amount equal to fifteen percent (15%) of Common Area Expenses, subject to change as determined by Declarant from time to time upon thirty (30) days prior written notice to the affected Owner(s). The Management Fee shall be considered part of the Common Area Expenses, except that if the amount of the Management Fee varies from Parcel to Parcel, each Owner shall pay the Management Fee assessed to its Parcel instead of its Proportionate Share of all Management Fees assessed against the Property.

5.2 Assessments. Each Owner's Proportionate Share of Common Area Expenses and the Management Fee constitutes a continuing lien and assessment against the Parcel of such Owner. With respect to any particular component of Common Area Expenses, Declarant may exclude the land area of Parcel(s), the Owner(s) or Permittees of which self-maintain with respect to such components of Common Area Expenses to assure that one hundred percent (100%) of each assessment is allocated among the remaining Owners.

5.3 Payment of Common Area Expenses. Declarant shall initially pay or cause to be paid all of the costs and expenses of operating, insuring, maintaining, repairing and replacing the Common Area, subject to receipt of the payments from the Owners as required under this Declaration or any other applicable agreement. Each of the Owners shall pay its Proportionate Share of Common Area Expenses and the Management Fee in accordance with the following:

(a) Each of the Owners shall, on or before the first day of each month, pay to Declarant an amount equal to 1/12 of its Proportionate Share of the amount of Common Area Expenses and the Management Fee estimated by Declarant for such calendar year (or the appropriate fraction thereof in the case of a partial calendar year or a partial calendar month). Alternatively, Declarant shall have the right to bill each Owner for its Proportionate Share of Common Area Expenses and the Management Fee as such costs are incurred (but no more often than monthly). If any utilities servicing the Common Area are not separately metered, then Declarant shall reasonably allocate the cost of utilities supplied for the Common Area, on the one hand, and the portion of the Property serviced by the joint meter(s), on the other hand. Each Owner whose Parcel is serviced by the joint meter(s) shall pay to Declarant the balance of the cost of utilities supplied that is not applicable to the Common Area prior to delinquency, in addition to such Owner's Proportionate Share of the cost of utilities applicable to the Common Area.

(b) Declarant shall, within one hundred twenty (120) days after the end of each calendar year, submit to the Owners a written itemized statement, together with complete back-up material and cost breakdowns, of the actual Common Area Expenses for the year, including a calculation of the Management Fee. With such statement Declarant shall pay to each applicable Owner the amount, if any, by which such Owner overpaid its Proportionate Share of the Common Area Expenses actually expended and the Management Fee for the year. If an Owner has paid less than its Proportionate Share of Common Area Expenses actually expended during the year and its Management Fee for the year, such Owner shall pay Declarant the amount of any such deficiency within thirty (30) days after receipt of such statement.

(c) Each Owner shall pay the costs or expenses shown on the statement of Common Area Expenses and the Management Fee within thirty (30) days after receipt of such statement (whether such statement is a reasonable estimate of such costs or expenses or based upon actual reasonable costs and expense incurred). Each Owner shall have the right to object in writing to any cost or expense shown on a statement of Common Area Expenses and the Management Fee within thirty (30) days after receipt of the statement, setting forth in reasonable detail the grounds for

such Owner's objections. An Owner shall also pay the costs and expenses to which it objects, which payment shall be deemed to be under protest. Declarant and the Owners shall cooperate reasonably in settling any dispute relating to Common Area Expenses and the Management Fee. Upon the final determination of such dispute, Declarant or an Owner, as the case may be, will then promptly make any additional payment owing to the other party, with interest (accruing from the 30th day after the statement was delivered to such Owner).

(d) Nothing herein shall preclude any different agreement between an Owner and Declarant respecting the payment of Common Area Expenses and/or the Management Fee by such Owner, but such different agreement shall not have any effect on the other Owners or limit Declarant's obligations hereunder to the other Owners to operate and maintain the Common Area as set forth in this Declaration.

5.4 Delegation by Declarant. Declarant shall have the right, from time to time, to have any one or more of its obligations under this Declaration with respect to the Common Area performed by a recognized professional commercial property management company (which may be an affiliate of Declarant). Each Owner hereby grants to Declarant, its agents, employees and contractors, a license to enter upon its Parcel to discharge such duties with respect to the Common Area.

6. Signs. As allowed by the ECC&Rs, Declarant shall have the right, which may be exercised in Declarant's sole and absolute discretion, to locate signs on the Common Area, determine the content thereof, and designate which tenant(s) and/or occupant(s) of the Property shall have the right to install and maintain its sign panel(s) upon such signs, if any.

7. Use Restrictions.

7.1 Exclusive Uses and Use Restrictions. Declarant shall have the right to modify this Declaration from time to time to include exclusive use rights and restrictions on use, collectively referred to herein as the "Use Restrictions" or modify the Use Restrictions then in place to protect a tenant or Owner of a Parcel, and upon recording of such modification, all Owners and Permittees shall be bound by such Use Restrictions, as modified; provided, however, that such modified Use Restrictions shall not prohibit a use then being conducted at the Property that was expressly permitted, or that was not prohibited or restricted, prior to commencement of such use, and shall not result in a reduction of services of such use, for so long as such use continues (including temporary periods of closure for repairs, remodeling, renovations, restorations, rebuilding and other reasons beyond the reasonable control of the person or entity conducting such use, financial inability to perform excepted). Each Owner understands and agrees that the foregoing Use Restrictions are in addition to the limitations on uses and competing businesses set forth in the ECC&Rs (the "ECC&Rs Restrictions") and agrees it is bound by the ECC&Rs Restrictions. The current Use Restrictions in effect at the Property include without limitation those set forth in Exhibit "D," incorporated herein by this reference.

7.2 Irreparable Harm. Each Owner agrees that it will not use its Parcel or allow its Permittees to use its Parcel to violate any of the Use Restrictions or the ECC&R's Restrictions. In the event of a violation or threat thereof of any of the provisions of this Paragraph 7, each Owner agrees that for the purpose of pursuing the remedy of injunctive or equitable relief, such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of this Paragraph 7, after written notice to the defaulting Owner of such default, and if such default is not cured within five (5) business days of delivery of such notice, then the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive and other equitable relief to enjoin a violation of this Paragraph 7, or a threatened violation hereof.

8. Insurance. Throughout the term of this Declaration, each Owner shall procure and maintain (or cause any of its Permittees to procure and maintain) the insurance covering its Parcel (including,



without limitation, the Common Area thereof) that is required to be obtained by such Owner under the ECC&Rs, and each Owner shall name Declarant and Lowe's, as their respective interests appear, and if requested by Declarant, any holder of a mortgage or deed of trust encumbering the Property or any portion thereof as an additional insured under its comprehensive general liability and property damage insurance policy to also cover Declarant and Lowe's against claims for personal injury, death, or property damage occurring upon such Owner's Parcel, with limits of coverage in compliance with those required under the ECC&Rs. To the extent permitted in the ECC&Rs, such insurance may be provided in whole or in part through a program of self-insurance, provided that all of the terms and conditions applicable to self-insurance as set forth in the ECC&Rs are met.

9. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property. No easements shall be implied by this Declaration, in that any easements between the Parcels have been established by the ECC&Rs.

10. Remedies and Enforcement.

10.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

10.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by another Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any other Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank of America, its successors or assigns (or if it no longer exists or is no longer publishing its prime rate, then the prime rate of the largest bank in California), but in no event more than the maximum rate of interest allowed by law (the "Interest Rate"). Notwithstanding anything to the contrary in the foregoing provision, nothing herein is intended nor shall it be construed to allow a non-defaulting party the right to construct the building of the defaulting party at the expense of the defaulting party.

10.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall, to the extent permitted by law, constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Official Records; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Official Records prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien. Such lien, when delinquent, may be enforced by suit or judicial foreclosure. Any Owner may sue for unpaid amounts and other charges authorized hereunder without foreclosing or waiving the lien securing the same. Sale or transfer of the Parcel of the defaulting Owner shall not affect the lien or relieve the Parcel of the defaulting Owner from the lien for any subsequent costs.

10.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

10.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration.

10.6 Mortgagee Protection Provision. Any Owner (including Declarant) shall have the right to encumber its interest in its respective Parcel by either a mortgage or deed of trust, provided such mortgage or deed of trust is subject to and subordinate to this Declaration. Notwithstanding the foregoing, such mortgage or deed of trust, once recorded in the Official Records, shall at all times remain superior to and have priority over any claim of lien thereafter recorded in the Official Records by virtue of or arising out of any breach of this Declaration. The breach of this Declaration, and the existence and enforcement of this Declaration, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value on any Parcel or Parcels after the date of recording of this Declaration in the Official Records, but the agreements, covenants, conditions, restrictions and obligations hereof shall be binding and effective against any Owner whose title is acquired by foreclosure or deed in lieu of foreclosure, trustee's sale or other enforcement of rights under such mortgage or deed of trust.

11. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the Official Records and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all the then record Owners of the Property.

12. Miscellaneous.

12.1 Attorneys' Fees. In the event an Owner institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

12.2 Amendment. The parties agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Property, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the Official Records. Notwithstanding the foregoing sentence, Declarant shall have the right to amend this Declaration as allowed under Paragraphs 4.1 and 7.1 hereof.

12.3 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the paragraph hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing.

12.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

12.5 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

12.6 Covenants to Run with Land. It is intended that each of the covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee,

leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

12.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee during the period of such grantee's ownership of such Parcel.

12.8 Separability. Each provision of this Declaration and the application thereof to the Property is hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration, and such provision shall be enforceable only to the extent permitted by law. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of the entire Property by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

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

12.10 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings (except those set forth in the ECC&Rs) are superseded hereby.

12.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Owner may change from time to time its respective address for notice hereunder by like notice to all other Owners, and any Owner acquiring an interest in a Parcel shall notify, in the manner set forth herein, Declarant and all other Owners of which the acquiring Owner has notice, of the acquiring Owner's address for notice. The notice address of Declarant is as follows:

Declarant: Riverton Meadows Partners, LLC  
5850 Canoga Avenue, Suite 650  
Woodland Hills, California 91367  
Attention: David M. Frank

With a Copy to: Freeman, Freeman & Smiley, LLP  
3415 Sepulveda Boulevard, Suite 1200  
Los Angeles, California 90034  
Attention: Glenn T. Sherman

12.12 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Declaration.

12.13 Estoppel Certificates. Each Owner shall, within thirty (30) days of its receipt of a written request from any other Owner(s), execute and deliver to the requesting Owner a certificate in recordable form stating that: (a) this Declaration is unmodified and in full force and effect (or has been modified and identifying the modifications), and (b) whether or not such Owner has sent any notice of any breach of this Declaration to any other Owner that has not been cured.

12.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

12.15 Subordinate Covenants. Any Owner of a Parcel may record additional easements, covenants, conditions or restrictions applicable to such Owner's Parcel only, so long as the same are subordinate to and not in conflict with this Declaration.

12.16 Prescriptive Easements/Adverse Possession. No title, easement or use pertaining to the Property or any portion thereof may be established by prescription or adverse possession, the statute of limitations for such purposes being expressly hereby waived.

12.17 Owner's Right to Pass Through Costs. Nothing herein shall prohibit an Owner from charging its Permittees any costs which such Owner is required to incur hereunder.

12.18 Counterparts. This Declaration may be executed in counterparts, each of which counterpart shall be deemed an original and all of which, taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Declaration as of the date first written above.

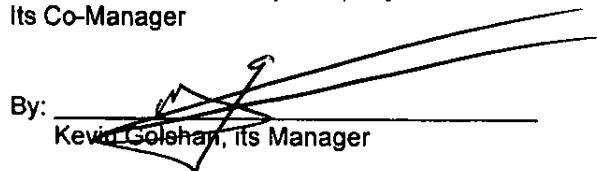
**DECLARANT:**

RIVERTON MEADOWS PARTNERS, LLC  
a Nevada limited liability company

By: The Merrill Companies, LLC,  
a California limited liability company

By:   
David M. Frank,  
Chief Executive Officer

By: Bangerter 126 Real Estate Holdings, LLC,  
a Nevada limited liability company  
Its Co-Manager

By:   
Kevin Golshan, Its Manager

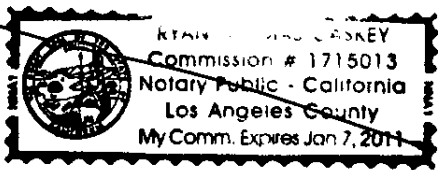
STATE OF CA )  
 ) ss.  
COUNTY OF LA )

Ryan Thomas Caskey

On 04/24/, 2007, before me, Ryan Caskey, Notary Public, personally appeared David M. Frank, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Ryan Caskey



STATE OF CA )  
 ) ss.  
COUNTY OF LA )

Ryan Caskey

On 04/24/, 2007, before me, Ryan Thomas Caskey, Notary Public, personally appeared KEVIN GOLSHIAN, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



②

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

LOT 2, RIVERTON MEADOWS COMMERCIAL SUBDIVISION, A PART OF THE  
SOUTHWEST QUARTER SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST,  
SALT LAKE BASE & MERIDIAN, RIVERTON CITY, COUNTY OF SALT LAKE,  
STATE OF UTAH, RECORDED ON JULY 29, 2005 IN THE SALT LAKE COUNTY  
RECORDER'S OFFICE AT ENTRY NO. 9446104.

559921.7  
19203-902

**BK 9458 PG 3310**

**EXHIBIT "B"**

**SITE PLAN**

***[SEE ATTACHED 1 PAGE]***

559921.7  
19203-902

BK 9458 PG 3311

0





**EXHIBIT B-1**  
**PROPOSED MODIFIED SITE PLAN**

***[SEE ATTACHED 1 PAGE]***

559921.7  
19203-902

BK 9458 PG 3313

*0*



**EXHIBIT "C"**  
**ELEVATIONS AND DESIGN GUIDELINES**

**[SEE ATTACHED 5 PAGES]**

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19203-902







EXHIBIT "C"  
PAGE 3 OF 5

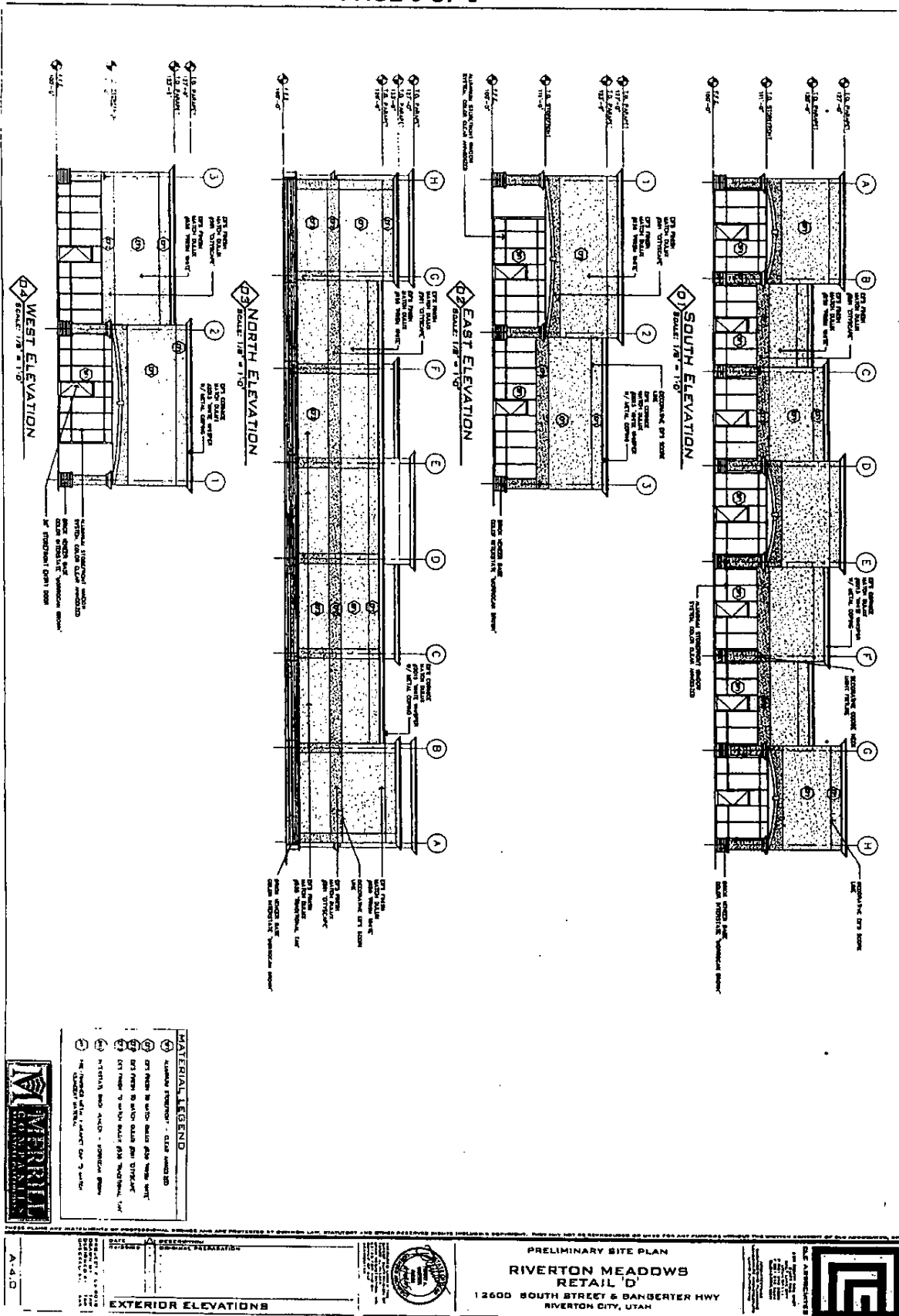
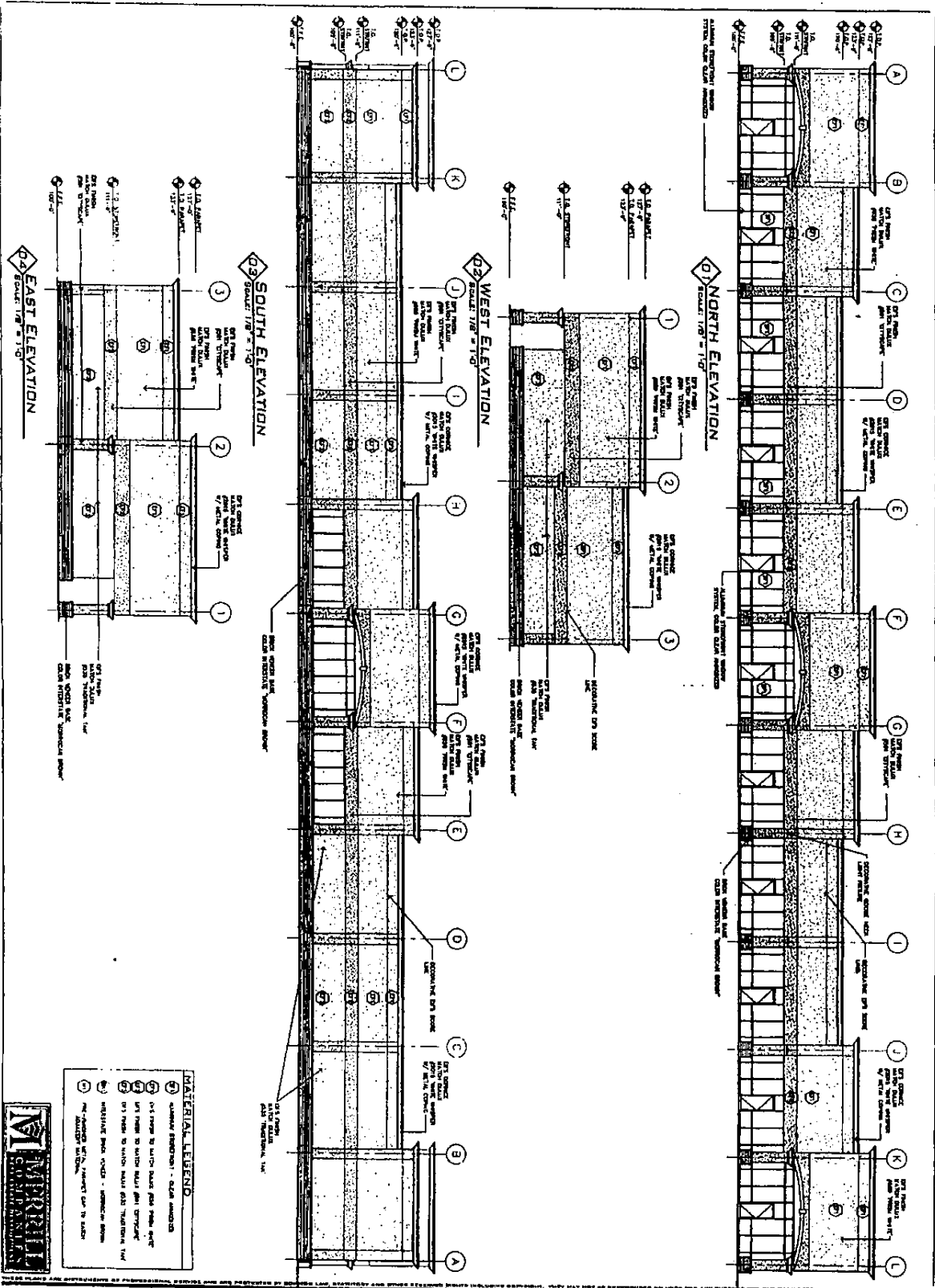


EXHIBIT "C"  
PAGE 4 OF 5



PRELIMINARY SITE PLAN  
RIVERTON MEADOWS  
RETAIL 'E'  
12400 SOUTH STREET & SANGERTER HWY  
RIVERTON CITY, UTAH

ARCHITECT: [Logo]  
SCALE: 1/8" = 1'-0"

DATE: [ ]  
BY: [ ]

EXTERIOR ELEVATIONS





EXHIBIT "D"

USE RESTRICTIONS

1. **Bank of the West Exclusive.** The following use restriction is applicable to all Parcels, except as to the operation of Bank of the West under that certain lease between Riverton Meadows Partners, LLC and Bank of the West (the "BOW Lease"), on the to-be-constructed Bank of the West premises on the Property (as used herein, "Bank of the West" shall include any permitted successor to or assignee of Bank of the West under the BOW Lease):

No Owner shall use or allow its Permittees to use any portion of the Parcel owned or controlled by such Owner primarily for the following: the operation of a commercial bank or savings and loan offering primarily banking services of the same type offered as of the date of the Lease by Bank of the West in its other retail banking facilities (the "Exclusive Use"). The foregoing restriction shall not apply to the incidental use of a Parcel for services that are a part of the Exclusive Use. The foregoing restriction shall also not apply to any uses permitted under leases of portions of a Parcel under the Parcel Owner's control in effect as of the date of execution of the BOW Lease. The foregoing restriction shall also not prohibit Owner from leasing space or selling a Parcel or portion thereof to a discount stock trader (i.e. "Scottrade"), a credit union, a check cashing business (i.e. "Payday"), or insurance services business, nor shall it prohibit the operation of an ATM located inside or attached to the outside of or otherwise associated with the premises of any Parcel Owner or its Permittees, including without limitation any credit union or check cashing business (but no Owner shall use or allow its Permittees to use space on its Parcel for a stand-alone drive-through or walk-up ATM kiosk not otherwise associated with any premises on such Parcel), or financing offered by Owner or any Permittees in connection with the sale of products or services sold by Owner or any Permittees on such Parcel. Services that are ancillary to the primary banking services use (such as, for example, photocopy services, notary services and similar business services) are not included in the scope of the Exclusive Use. The provisions of this paragraph shall terminate and be of no further force or effect if at any time Bank of the West ceases to use and occupy the to-be constructed premises on the Property for the Exclusive Use as its primary use of the Premises.