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Book - 9872 Pg - 8004-8024
Gary W. Ott
Recorder, Salt Lake County, UT
ALTA TITLE
BY: eCASH, DEPUTY - EF 21 P.

WHEN RECORDED RETURN TO:

MAZURAN & HAYES, P.C.
2118 East 3900 South
Suite 300
Salt Lake City, Utah 84124
Attention: Michael Hayes

Space above for County Recorder's Use

**RESTRICTION AGREEMENT
AND GRANT OF EASEMENTS**

THIS RESTRICTION AGREEMENT AND GRANT OF EASEMENTS (this "Agreement") is made as of this 21st day of October, 2010 by and between **MAGNA INVESTMENT AND DEVELOPMENT, LTD.**, a Utah limited partnership ("Pad Site Owner"), **A&B LITTLE COTTONWOOD LLC**, a Delaware limited liability company ("Shopping Center Owner").

1. PRELIMINARY

1.1 Parties. Pad Site Owner is the Owner of the Pad Site Parcels consisting of 2 undeveloped building pads (separate legal lots) facing Highland Drive more particularly described in Exhibit "1" to this Agreement, and Shopping Center Owner is the Owner of the Shopping Center Parcels, more particularly described in Exhibit "2" to this Agreement. The Parcels are located near the intersection of 2000 East and 9400 South, in the City of Sandy, County of Salt Lake, State of Utah, as more clearly delineated on the Site Plan.

1.2 Purpose. Pad Site Owner or its assigns plans to develop the two Pad Site Parcels and, the parties therefore, do hereby fix and establish the Easements and Restrictions upon and subject to which the Pad Site Parcels and the Shopping Center Parcels, or any part thereof, shall be improved, held, leased, sold, and/or conveyed. Such Easements and Restrictions shall run with the land and inure and pass with such Parcels and shall apply to and bind the respective successors in interests thereof, and all and each easement and restriction is imposed upon such Parcels as a mutual equitable servitude in favor of such Parcels and any portion thereof.

1.3 Definitions. The following defined terms shall have the meanings set forth below for purposes of this Agreement. Capitalized terms used herein that are not otherwise used herein shall have the same meaning given such terms under the Existing REA (defined below).

- (a) **"Agreement."** This Restriction Agreement and Grant of Easements.
- (b) **"Default Rate."** Ten percent (10%) per annum.
- (c) **"Easements."** The easements fixed and established upon the Shopping Center pursuant to this Agreement.

(d) **“Existing REA.”** That certain Restriction Agreement and Grant of Easements dated August 14, 2007, recorded on August 17, 2007 as Entry No. 10196709 in Book 9504 at Pages 9691-9757 in the Official Records of Salt Lake County, Utah.

(e) **“Ground Lease.”** That certain Shopping Center Ground Lease, dated November 20, 1996, between Magna Investment & Development, Ltd., as landlord, and Albertson’s, Inc., as tenant, as amended and as assigned. A memorandum of the Ground Lease, entitled Memorandum of Shopping Center Ground Lease, dated December 4, 1996, was recorded on December 13, 1996, as Entry No. 6527390, in Book 7556, Pages 1065-1106 in the Official Records of Salt Lake County, Utah, and was amended by First Amendment to Memorandum of Shopping Center Ground Lease dated March 12, 1998, recorded as Entry No. 6894319, in Book 7912, Page 699 in the Official Records of Salt Lake County, Utah.

(f) **“Pad Site Owner.”** Magna Investment and Development, Ltd., a Utah limited partnership, its successors and assigns.

(g) **“Pad Site Parcels.”** The Parcel legally described on Exhibit “1” and identified on the Site Plan as the “Pad Site Parcels” as shown on Exhibit “3” attached hereto and made a part hereof.

(h) **“Parcel” or “Parcels.”** Individually or collectively, the Shopping Center Parcels, and the Pad Site Parcels, as each is shown on the Site Plan and more particularly described in Exhibit “3”.

(i) **“Party” or “Parties.”** The parties set forth in Section 1.1 above, their successors and assigns.

(j) **“Permittee.”** All occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, assignees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Parcels.

(k) **“Restrictions.”** The covenants, restrictions, liens, and encumbrances fixed and established upon the Parcels pursuant to this Agreement.

(l) **“Shopping Center Owner.”** A&B Little Cottonwood LLC, a Delaware limited liability company, its successors and assigns.

(m) **“Shopping Center Parcels.”** The Parcel legally described in Exhibit “2” and identified on the Site Plan as the “Shopping Center Parcels” as shown on Exhibit “3” attached hereto and made a part hereof.

(n) **“Site Plan.”** The site plan shown on Exhibit “3” attached hereto.

2. COMPLIANCE WITH EXISTING REA AND GROUND LEASE

2.1 Compliance with Existing REA. Pad Site Owner and Shopping Center Owner hereby covenant with each other to cause its respective Parcels to comply with the terms of the Existing REA for so long as the Existing REA shall remain in effect. Without limiting the foregoing, Pad Site Owner agrees that any construction on any Pad Site Parcel shall be in compliance with the provisions for Outparcels under the Existing REA. Pad Site Owner shall not cause the Shopping Center Parcels to violate the Existing REA. Each of the Pad Site owner and the Shopping Center Owner shall indemnify the other with respect to any violation by it of the Existing REA or any breach of this Agreement that results in a breach of the Existing REA. The covenants herein are independent of any obligation or

covenant in the Existing REA and may be enforced separately by either pad Site Owner of Shopping Center Owner.

2.2 Confirmation of Certain Rights and Obligations under Existing REA. Pad Site Owner hereby confirms that each of the Pad Site Parcels is subject to the obligations under the Existing REA, including but not limited to the obligation not to allow employees or customers of the Pad Site Parcels to park on the Shopping Center Parcel. Pad Site Owner hereby confirms its agreement that Shopping Center Owner, and not Pad Site Owner, is a "Consenting Owner" under the Existing REA. Pad Site Owner hereby agrees to treat the Pad Site Parcels as separate parcels from the remainder of the Shopping Center Parcels for all purposes, including but not limited to Pad Site Owner's agreement not to stage on the Shopping Center Parcels under Section 2.4(c) of the Existing REA.

2.3 Compliance with Ground Lease. Pad Site Owner acknowledges that the Ground Lease includes various restrictions on the Pad Site Parcels, including but not limited to restrictions upon construction of buildings on the Pad Site Parcels and restrictions on use of the Pad Site Parcels. For so long as Magna Investment & Development, Ltd. or any affiliate thereof is the owner of a Pad Site Parcel, the Pad Site Owner agrees to comply with all restrictions upon such Pad Site Parcel as set forth in the Ground Lease, whether or not such restrictions are included in the Ground Lease Memorandum. If a Pad Site Parcel is no longer owned by Magna Investment & Development, Ltd. or any affiliate thereof, the Pad Site Owner agrees to comply with all restrictions upon such Pad Site Parcel only to the extent included in the Ground Lease Memorandum. Pad Site Owner shall not cause the Shopping Center Owner to violate the terms of the Ground Lease. Pad Site Owner hereby further covenants with Shopping Center Owner to cause the Pad Site Parcels to comply with the terms applicable to the Pad Site Parcels under the Ground Lease for so long as the later to occur of: (a) the expiration of the term of the Ground Lease, including any extension or amendment thereof; or (b) the termination of this Agreement. In confirmation of the foregoing clause (b) and in recognition of the importance of restrictions on the Pad Site Parcels to the value of the Shopping Center regardless whether the Ground Lease shall continue to be in effect, Pad Site Owner expressly agrees that Shopping Center Owner may enforce the restrictions upon a Pad Site contained in the Ground Lease, to the extent set forth in the Ground Lease Memorandum, even after the Ground Lease has terminated.

2.4 Indemnity. In addition to the indemnification provided below, each Owner shall indemnify, defend, protect, and hold every other Owner and their respective officers, directors, shareholders, employees, and agents harmless for, from, and against any and all Claims arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on any Parcel and arising out of or resulting from any construction activities performed by or at the request of an Owner or their Occupants, including an Owner's or Occupant's own negligence, unless such damage or destruction is caused solely by the negligent or willful act or omission of the indemnified Owner. Pad Site Owner agrees to indemnify and hold Shopping Center Owner harmless for, from and against any liability of Shopping Center Owner to the lessee under the Ground Lease resulting from a violation of the Ground Lease by Pad Site Owner or occurring on the Pad Site Parcel owned by such Pad Site Owner. Pad Site Owner acknowledges that Pad Site Owner, and not Shopping Center Owner, shall have responsibility to maintain the buildings on the Pad Site Parcel owned by Pad Site Owner in compliance with the standards required by the Ground Lease and, therefore, agrees to indemnify and hold Shopping Center Owner harmless for, from and against any failure of Pad Site Owner to do so.

3. EASEMENTS

3.1 Ingress and Egress. Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, and for the use of said Owner and its Permittees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon,

over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Areas, including, without limitation, the Permanent Access Drives. The easements provided for in this Section 3.1 shall not benefit and, without the written approval of the Consenting Owners, may not be assigned or granted to or for the benefit of any property outside the Shopping Center.

3.2 Parking. No Owner or its Permittees shall allow employees or agents or contractors to park on a Parcel owned by any other Owner. Accordingly, each Owner shall use its reasonable best efforts to prohibit employees, agents or contractors from utilizing any parking spaces located on the property of any other Owner.

3.3 Utility Lines and Facilities.

(a) Each Owner, as grantor, hereby grants to each other Owner, as grantee, for the benefit of each Parcel belonging to the other Owners, a nonexclusive easement under, through, and across the Common Area of the grantor's Parcel(s) for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines, subject to the written approval of the granting Owner as to the location of such Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Shopping Center) or which have been approved by the Consenting Owners shall be permitted. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a private party. The installation, operation, maintenance, repair, and replacement of such easement facilities shall not unreasonably interfere with the use of the Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair, and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

(b) Notwithstanding the grant of easement for sewer lines included within Section 3.3(a) above, any connections to sewer lines, may only be made in the event that (i) the Owner of a Parcel benefiting from the sewer line easement (a "**Grantee Parcel**") makes at its sole expense any and all improvements to the sewer lines and systems (including, without limitation, any lift stations) as are necessary or required in order to increase the capacity of the sewer lines and systems to adequately serve the Grantee Parcel pursuant to plans and specifications that comply with the requirements of all Governmental Regulations and that are first approved by the Consenting Owners and the Owner of the Parcel burdened by the sewer line easement (a "**Grantor Parcel**"), (ii) the Owner of the Grantee Parcel procures all permits, licenses, and approvals and pays any and all tap-on or similar fees required to make any such improvements and to so utilize and connect with such sewer lines and systems, and (iii) the Owner of the Grantee Parcel pays for increased costs of maintenance and repair due to such development work. Notwithstanding the preceding sentence, so long as a Consenting Owner complies with the requirements of all Governmental Regulations, such Consenting Owner will not be required to obtain the approval of the Owner of the Grantor Parcel as set forth in subsection (b)(i) above.

(c) At any time and from time-to-time an Owner shall have the right to install, repair, maintain, and/or relocate on its Parcel any Utility Line installed (or to be installed) pursuant to the foregoing grant of easement which is then located (or to be located) on the Parcel of such Owner, provided that (i) in the case of an installation or relocation, such installation or relocation shall be performed only

after sixty (60) days' notice in writing of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) in the case of a repair and/or maintenance, such repair and/or maintenance shall be performed only after thirty (30) days notice in writing of the Owner's intention to undertake repair and/or maintenance shall have been given to the Owner of each Parcel served by the Utility Line, except in the case of an emergency (defined as any situation where there is an imminent threat of harm to persons or property), when such notice shall be given a reasonable period in advance of such emergency repair as is practicable, (iii) any such repair, maintenance and/or relocation shall not unreasonably interfere with or diminish utility service to the Parcels served by the Utility Line, (iv) any such repair, maintenance and/or relocation shall not reduce or unreasonably impair the usefulness, capacity or function of the Utility Line, (v) any such repair, maintenance and/or relocation shall be performed without cost or expense to the Owner or Occupant of any other Parcel, (vi) any such repair, maintenance and/or relocation shall provide for the original and relocated area (if applicable) to be restored using materials and design standards which equal or exceed those originally used, (vii) any such repair, maintenance and/or relocation shall not interfere with the business operation of any of the Owners or Occupants of the Shopping Center. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(d) The terms and provisions of this Section 3.3 shall survive the expiration or earlier termination of this Agreement.

3.4 No Merger. Notwithstanding an Owner's ownership of more than one Parcel, the easements granted hereunder shall burden and benefit each Parcel individually, without merger as a result of such common ownership, and upon conveyance of a Parcel so that such Parcel ceases to be under common ownership, neither the Owner conveying said Parcel nor the Owner acquiring said Parcel shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date this Agreement is recorded in the office of the recorder of the county in which the Shopping Center is located.

3.5 Storm Drainage and Detention. Shopping Center Owner hereby grants and conveys to the Owner of the Pad Site Parcels the perpetual right and easement to (a) discharge surface storm water drainage and/or runoff from the Pad Site Parcels over, upon, and across a portion of the Shopping Center Parcels, and (b) connect to, utilize, and maintain a portion of the existing storm drainage System for the Shopping Center ("**Storm Drainage Easement**"). The Storm Drainage Easement is legally described on Exhibit "4" attached hereto and made a part hereof. All surface water collection, retention, and distribution facilities shall be deemed a Utility Line. No Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Parcel if such alteration would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All drains, gutters, downspouts, berms, swells, and other drainage facilities and systems (collectively "**Systems**") shall be maintained by each Owner, with respect to the portion of each such System located upon an Owner's Parcel, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof. Except as otherwise provided herein, Shopping Center Owner and Pad Site Owner acknowledge and agree that each Parcel shall provide for its own detention and storm water drainage system.

4. SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE

4.1 Successors and Assigns; Limitation on Release. This Agreement and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors, and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however,

that if any Owner sells all or any portion of its interest in any Parcel, and such Owner, then at such time as the selling Owner executes and delivers to the other Owners a written statement in which the name and address of the new Owner, the effective date of the conveyance, the Parcel conveyed, and, if applicable, the name of a new Party who has taken the position of a Consenting Owner, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify, or otherwise affect the liability of the new Owner pursuant to the provisions of this Agreement, but such failure shall constitute a default by conveying Owner resulting in continued liability hereunder.

5. DEFAULT

5.1 Default. In the event any Owner or Occupant fails to perform any other provision of this Agreement, which failure continues for a period of ten (10) days' after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner or Prime Lessee may thereafter institute legal action against the defaulting Owner or Occupant for specific performance, declaratory or injunctive relief, monetary damages, or any other remedy provided by law; provided, however, that the defaulting Owner or Occupant shall not be deemed to be in default if such failure to perform cannot be rectified within said ten (10) day period and such Owner or Occupant is diligently proceeding to rectify the particulars of such failure and rectifies same within a period not to exceed thirty (30) days; provided further, however, that in the event of an emergency, such failure shall be deemed a default if such failure is not rectified in a period reasonable for the nature and circumstances of such emergency (by way of example, but not as a limitation, the failure to promptly remove snow or otherwise maintain the Common Area such that Owners, Occupants and Permittee can get to the Pad Site Parcels shall constitute and emergency).

5.2 Self-Help. If an Owner or Occupant of any Parcel fails to perform any provision of this Agreement, then, upon the expiration of the cure period provided in Section 8.1, and upon an additional ten (10) days prior written notice (except that no additional notice shall be required in an emergency), any Consenting Owner shall have the right, but not the obligation, to enter upon the defaulting Owner's or Occupant's Parcel to cure such default for the account of and at the expense of the Owner or Occupant of such Parcel. If a Consenting Owner exercises its self-help right, then, within ten (10) days after receipt of an invoice from such Consenting Owner, the defaulting Owner and/or Occupant shall reimburse to such Consenting Owner all costs reasonably incurred by the Consenting Owner in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs.

5.3 Remedies Cumulative. In addition to the remedies set forth in this Agreement, each Person entitled to enforce this Agreement shall be entitled to exercise all other remedies provided by law or in equity to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Person shall exclude any other remedy herein, by law or in equity, but each shall be cumulative.

6. ADDITIONAL RESTRICTIONS

6.1 Existing Exclusive Uses. In addition to compliance with the use restrictions under the Existing REA and the Ground Lease, the Owners of the Pad Site Parcels shall not permit any use of the

Pad Site Parcels that shall cause the Owner of the Shopping Center Parcel to breach any provision of any lease, including but not limited to any exclusive use provisions, existing for the Shopping Center as of October 26, 2010.

6.2 Landscaping. Regardless whether the Existing REA gives the Owner of the Shopping Center Parcel the right to approve landscaping on the Pad Site Parcels, the Pad Site Owner hereby agrees that it will not install any landscaping on the Pad Site Parcels without the prior written approval of the Shopping Center Owner, which approval will not be unreasonably withheld or delayed.

7. COMMON AREA MAINTENANCE

Notwithstanding anything to the contrary contained in this Agreement, the parties hereto agree that, beginning with October 26, 2010, the Shopping Center Owner shall perform common area maintenance for the Pad Site Parcels as shown on Exhibit "5" attached hereto and, correspondingly, may charge the Owner of the Pad Site Parcels for the cost thereof, also as shown on Exhibit "5" attached hereto, including the Landscaping Area Maintenance Fees under Section 6.4 of the Existing REA. The Owner of each Pad Site Parcel shall pay to the Shopping Center Owner, upon demand by Shopping Center Owner, its pro rata share of such common area maintenance expenses. The pro rata share for each Pad Site Parcel shall be calculated as follows: the numerator of the fraction is the actual gross leasable floor area of the building on the Pad Site Parcel and denominator of the fraction is the floor area of all Buildings contributing to the applicable expense (including, if applicable, Home Depot). Notwithstanding the foregoing, commencing upon October 26, 2010, until such time as any building is completed (e.g., a certificate of occupancy has been issued) on a Pad Site Parcel, the pro rata share payable shall be based upon the assumption that such Pad Site Parcel has a building with a gross leasable area of 2,425 square feet (4,850 in the aggregate for both Pad Site Parcels).

8. GENERAL PROVISIONS

8.1 Covenants Run With the Land. The terms of this Agreement and each Restriction and Easement on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof, and shall run with the land.

8.2 No Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed. An Owner shall have the right to close, if necessary, all or any portion of the Common Area on its Parcel from time-to-time as may be necessary, in the opinion of such Owner, to prevent a dedication thereof or the accrual of any rights of the public therein.

8.3 Duration. Except as otherwise provided herein (including but not limited to the provisions hereof relating to the Ground Lease, the term of this Agreement shall be coterminous with the Existing REA; provided, however, Shopping Center Owner shall not terminate the Existing REA without the consent of each Pad Site Owner. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination, and, provided further, that the access easements and the rights and duties related thereto as provided in Section 3.1, the sign easements and the rights and duties related thereto as provided in Section 3.4 and the utility easements and the rights and duties related thereto as provided in Section 3.3 and the drainage easements as provided in Section 3.5 shall continue in effect in perpetuity as to those

access easements, signs and utility lines and drainage easements actually in use at the time of the termination of this Agreement until such time as such access easements, signs, utility lines and drainage easements are abandoned or ceased to be used to serve a Building in the Shopping Center.

8.4 Injunctive Relief. In the event of any violation or threatened violation by any Person of any of the Easements, Restrictions, or other terms of this Agreement, any or all of the Owners and Prime Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Agreement or provided by law or in equity.

8.5 Modification and Termination. Notwithstanding the provisions of Section 7.6 below, this Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of all of the Owners at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of Owners and recorded in the office of the recorder of the county in which the Parcels are located. No modification or termination of this Agreement as provided herein shall adversely affect the rights of any senior Lienholder unless such Lienholder consents in writing to the modification or termination.

8.6 Method of Approval. Unless otherwise provided in this Agreement, whenever approval, consent, or satisfaction (collectively, an “**approval**”) is specifically required of an Owner pursuant to the express terms of this Agreement (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned, or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within thirty (30) days after receipt of written request for approval. If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within fifteen (15) days shall be deemed approval, then the failure to respond within such fifteen (15) day period shall constitute the approval of the Owner from whom approval was requested. All approvals (including conditional approvals) and disapprovals shall not be effective unless given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner’s approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests. Since the submission of a proposed amendment to the Parties is not an item of “consent” or “approval”, each Party may consider any proposed amendment to this Agreement in its sole and absolute discretion without regard to reasonableness or timeliness.

8.7 Multiple Owners. In the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or consent or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Agreement to the contrary notwithstanding.

8.8 Estoppel Certificates. Any Owner may, at any time and from time-to-time, in connection with the sale or lease of the Owner’s Parcel, or in connection with the financing or refinancing of the Owner’s Parcel by bona fide mortgage, deed of trust, or sale-leaseback made in good faith and for value, deliver written notice to the other Owners requesting such Owners to execute certificates certifying that to the best knowledge of the other Owners, (i) neither the requesting Owner nor any other Owner is in default in the performance of its obligations under this Agreement, or, if a default is alleged, specifically describing the nature and amount thereof, and (ii) confirming that this Agreement has not been amended (or, if so, identifying the amendments), and is in full force and effect. Each Owner shall execute and return such a certificate within thirty (30) days after receipt of a request therefore. The Owners acknowledge that such certificates may be relied upon by transferees, mortgagees, deed of trust

beneficiaries and leaseback lessors. Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information (but it shall estop such person from making assertions contrary to those set forth in the certificate for the period covered by the certificate.

8.9 Breach Shall Not Permit Termination. It is expressly agreed that a breach of this Agreement shall not entitle any Owner to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement. Any breach of this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

8.10 Notices.

(a) All notices, requests, demands, or other communications given pursuant to this Agreement shall be in writing and shall be given by facsimile, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal Express or United Parcel Service), sent to the person and address or facsimile number designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. The Parties expressly agree that notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Agreement. All notices to Pad Site Owner and the Owner of the Shopping Center Parcels shall be sent to the person and address set forth below:

If to Pad Site Owner: Magna Investment and Development, Ltd.
36 East 3750 South
Salt Lake City, Utah 84115
Attention: Steven Marshall

With a copy to: Mazuran & Hayes, PC
2118 East 3900 South, Suite B-300
Salt Lake City, Utah 84124
Attention: Michael Z. Hayes

If to Shopping Center Owner:
A&B Little Cottonwood LLC
822 Bishop Street
Honolulu, Hawaii 96813
Attn: Norbert Buelsing

With a copy to: Alexander & Baldwin, Inc.
822 Bishop Street
Honolulu, Hawaii 96813
Attn: Charles W. Loomis

The Person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Parties. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, (iii) in the case of a facsimile, the date and time of receipt as shown on the confirmation of the facsimile transmission; (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

8.11 Waiver. The failure of a Person to insist upon strict performance of any of the Restrictions or other terms and provisions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions or other terms and provisions contained herein by the same or any other Person.

8.12 Attorneys' Fees. In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

8.13 Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

8.14 Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties. Each Party shall be considered a separate party and no Party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

8.15 Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

8.16 Interpretation. Whenever the context requires construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Agreement.

8.17 Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements between the parties, oral or written, with respect to the Easements, Restrictions, and other terms and conditions contained in this Agreement affecting the Parcels.

8.18 Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

8.19 Recordation. This Agreement shall be recorded in the office of the recorder of the County in which the Shopping Center is located.

8.20 Lienholder Protection. This Agreement and the Easements and Restrictions established hereby with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust made in good faith and for value, but all the Easements and Restrictions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

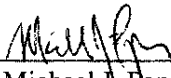
8.21 Time of Essence. Time is of the essence with respect to the performance of each obligation of this Agreement.

[SIGNATURE PAGES FOLLOW]

EXECUTED as of the day and year first above written.

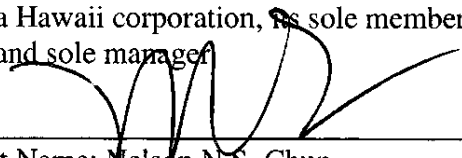
MAGNA INVESTMENT & DEVELOPMENT, LTD.,
a Utah limited partnership

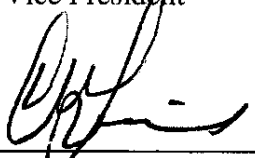
By: Allied Services, Inc.
a Utah corporation, its General Partner

By: 
Name: Michael J. Papanikolas
Title: Vice President

A&B LITTLE COTTONWOOD LLC,
a Delaware limited liability company

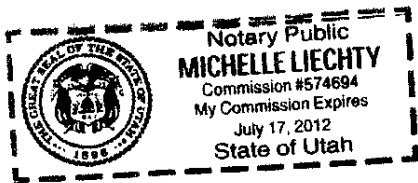
By Alexander & Baldwin, Inc.,
a Hawaii corporation, its sole member
and sole manager

By: 
Print Name: Nelson N.S. Chun
Its: Senior Vice President

By: 
Print Name: Charles W. Loomis
Its: Assistant Secretary

STATE OF Utah)
)ss.
COUNTY OF Salt Lake)

On the 26th day of October, 2010, personally appeared before me, Michael J. Papanikolas, Vice President of Allied Services, Inc., a Utah corporation, General Partner of Magna Investment & Development, Ltd., a Utah limited partnership, the signer of the within instrument, who duly acknowledged to me that he executed the same, for and on behalf of Allied Services, Inc., a Utah corporation, as General Partner of Magna Investment & Development, Ltd., a Utah limited partnership, as partner therein.



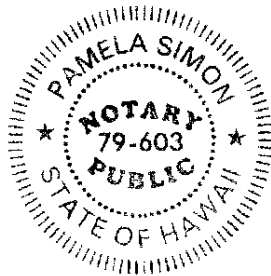


Notary Public
Residing at:

My Commission Expires: 07-17-2012

STATE OF HAWAII)
) SS:
 CITY AND COUNTY OF HONOLULU)

On this the 21st day of October, 2010, before me, the undersigned Notary Public, personally appeared NELSON N.S. CHUN, Senior Vice President of Alexander & Baldwin, Inc., sole member of A&B Little Cottonwood LLC, a Delaware limited liability company, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



Signature: Pamela Simon
 Print Name: Pamela Simon
 Notary Public, State of Hawaii
 My commission expires: 9-13-2011

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

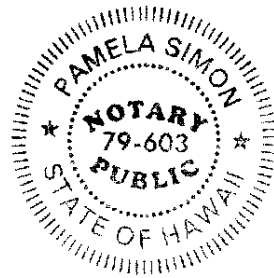
Document Identification or Description: Restriction Agreement and Grant
of Easements

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 10 Jurisdiction: First Circuit
 (in which notarial act is performed)

Pamela Simon 10-21-2010
 Signature of Notary Date of Notarization and
 Certification Statement

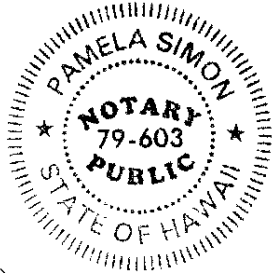
Pamela Simon
 Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII)
) SS:
 CITY AND COUNTY OF HONOLULU)

On this the 21st day of October, 2010, before me, the undersigned Notary Public, personally appeared CHARLES W. LOOMIS, Assistant Secretary of Alexander & Baldwin, Inc., sole member of A&B Little Cottonwood LLC, a Delaware limited liability company, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



Signature: Pamela Simon
 Print Name: Pamela Simon
 Notary Public, State of Hawaii
 My commission expires: 9-13-2011

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: <u>Restriction Agreement and Grant of Easements</u>	
Doc. Date: _____ or <input checked="" type="checkbox"/> Undated at time of notarization.	
No. of Pages: <u>16</u>	Jurisdiction: First Circuit (in which notarial act is performed)
<u>Pamela Simon</u> Signature of Notary	<u>10-21-2010</u> Date of Notarization and Certification Statement
<u>Pamela Simon</u> Printed Name of Notary	(Official Stamp or Seal)

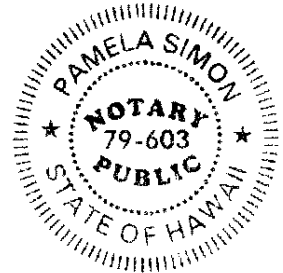


Exhibit 1 - REA

Lot 4, Little Cottonwood Center Subdivision – First Amendment, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder.

The following is shown for informational purpose only: 28-09-226-055

Lot 5, Little Cottonwood Center Subdivision – First Amendment, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder.

The following is shown for informational purpose only: 28-09-226-056

Exhibit 2 REA

Lot 1, Little Cottonwood Center Subdivision – First Amendment, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder.

The following is shown for informational purpose only: 28-09-226-054

EXHIBIT "4" TO REA

LEGAL DESCRIPTION OF STORM DRAINAGE EASEMENT

STORM DRAINAGE EASEMENT

A part of the Little Cottonwood Center Subdivision located in the Northeast Quarter of Section 9, Township 3 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey, described as follows:

BEGINNING at a point on the Southerly right-of-way line of 9400 South Street, which is 59.66 feet South 00°08'12" West along the Section line and 1211.75 feet West from the Northeast corner of said Section 9 and running thence South 45°16'42" West 32.95 feet; thence South 00°00'22" West 414.31 feet; thence North 89°59'38" West 24.08 feet; thence South 00°00'22" West 77.66 feet; thence South 89°59'38" East 24.08 feet; thence South 00°00'22" West 71.37 feet; thence North 89°59'38" West 75.89 feet; thence North 00°00'22" East 520.53 feet; thence South 89°58'18" West 20.00 feet; thence North 00°00'22" East 65.59 feet to said 9400 South Street; thence North 89°48'32" East 119.30 feet along said Street to the POINT OF BEGINNING.

- Contains approximately 1.01 acres.

Exhibit "5"

The Pad Site Parcels shall reimburse their pro-rata share of the following costs, plus an Administrative Fee of 10% of actual amounts.

- Electric for parking lot lighting
- Paving maintenance (repairs, sealcoating, striping, replacement)
- Water for landscape irrigation
- Storm water systems maintenance, fees and related charges
- Liability insurance for common areas
- Landscape maintenance and replacement
- Parking lot sweeping
- Snow removal