

WHEN RECORDED MAIL TO:

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**MASTER DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THANKSGIVING POINT DEVELOPMENT,  
LEHI, UTAH**

**THIS MASTER DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR THANKSGIVING POINT DEVELOPMENT**  
(hereinafter the "Declaration") is made this \_\_\_ day of November, 1999, by **THANKSGIVING  
POINT DEVELOPMENT, L.C.**, a Utah limited liability company (hereinafter "Declarant") and  
the other parties set forth on the signature pages hereof.

**RECITALS:**

A. The Owners own fee simple title to that certain real property situated in the City of Lehi, County of Utah, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property").

B. Owners desire to develop and maintain within and upon the Property a high quality combined retail, commercial, office, recreational, and educational complex in an attractive park-like setting to be known as Thanksgiving Point (hereinafter the "Park").

C. The Owners anticipate that the Property will, from time to time, be subdivided into separate areas with different types of uses being limited to certain areas of the Park and anticipate that certain areas in the Park may be further subdivided to allow the sale of individual lots in each such area.

D. To provide efficient management for Property and to preserve its value, desirability and attractiveness, Owners have incorporated a Utah nonprofit corporation called Thanksgiving Point Master Owners Association (hereinafter the "Master Association") and have delegated and assigned to such Master Association certain powers of providing for the administration and enforcement of all covenants, conditions and restrictions affecting the Park pursuant to this Declaration, of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to and of performing such other acts as shall generally benefit the Park.

E. Owners will hereafter hold and convey title to all of Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Owners hereby covenant, agree and declare that all of their respective interests as the same may from time to time appear in Property shall be held and conveyed subject to the following covenants, conditions restrictions and easements which are hereby declared to be for the benefit of said interests in the Property, and the owners of said interests, their successors and assigns.

## ARTICLE 1 DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

1.1 "Articles" and "Bylaws" shall mean the Articles of Incorporation and Bylaws of the Master Association as the same may from time to time be duly amended. The Articles, among other things, establish the Master Board to manage the affairs of the Master Association. The Bylaws, among other things, set forth the number of persons constituting the Master Board, the method of the Master Board's selection, the Master Board's general powers, the method of calling a meeting of Members of the Master Association and the Members required to constitute a quorum for the transaction of business.

1.2 "Assessments" shall include each and all of the Assessments hereinafter defined:

(a) "Regular Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the cost to the Master Association for Common Expenses.

(b) "Special Assessment" shall mean a charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, to reimburse the Master Association for costs incurred in bringing the Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, or any other charge designated as a Special Assessment in this Declaration, the Articles, or Bylaws, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

1.3 "Building" shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.

1.4 "City" shall mean the City of Lehi, Utah, a municipal corporation of the State of Utah.

1.5 "Common Expense" shall mean the actual and estimated costs of:

- (a) unpaid Special Assessments;
- (b) costs of management and administration of the Master Association, including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys and employees;
- (c) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Facilities maintained by the Master Association, if any;
- (d) the costs of any other insurance obtained by the Master Association;
- (e) reasonable reserves as deemed appropriate by the Master Board;
- (f) the costs of bonding the members of the Master Board, any professional managing agent or any other person handling the funds of the Master Association;
- (g) taxes paid by the Master Association;
- (h) amounts paid by the Master Association for discharge of any lien or encumbrance levied against the Common Facilities maintained by the Master Association, or portions thereof; and
- (i) the costs of any other item or items designated by, or in accordance with other expenses incurred by the Master Association in connection with the Common Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Master Association or in the discharge of any obligations imposed on the Master Association by this Declaration.

1.6 "Common Facilities" shall mean:

- (a) all real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to either the Master Association or a Secondary Owners Association for the common use and benefit of either all of the Owners or one or more, but less than all, of the Owners pursuant to a Secondary Declaration, including, without limitation, streets, landscaped areas, parks, open spaces, paths, trails and slopes; and
- (b) all property rights, improvements, fixtures and personal property owned by or leased to either the Master Association or a Secondary Owners Association from time to time for the common use and benefit of either all of the Owners or one or more,

but less than all, of the Owners and situated upon public property or the private property of the Owners, including, without limitation, all easements running in favor of either the Master Association or any Secondary Owners Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street furniture.

The Common Facilities maintained, owned, or leased by any Association other than the Master Association shall be shall be designated in each final subdivision plat recorded with regard to the Property, or any part thereof, and shall be conveyed to such Association concurrently with the recording of such plat. Common Facilities shall be conveyed to the applicable Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration or in any Secondary Declaration applicable to such portion of the Property.

1.7 "Declarant" shall mean Thanksgiving Point Development, L.C. a Utah limited liability company. Additionally, for purposes of Article 2, Declarant shall also mean Whistle Stop Development Corporation or such other entity owned exclusively by Alan and/or Karen Ashton which was formed for the express purpose of owning real property within the Project.

1.8 "Exhibit" shall mean those documents so designated herein and attached hereto and each of such Exhibits is by this reference incorporated into this Declaration.

1.9 "Hazardous Condition" shall have the meaning set forth in Section 5.4(a).

1.10 "Hazardous Material" means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations" and individually, an "Environmental Regulation"); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term "Environmental Regulations" shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

1.11 "Improvements" shall mean any object or thing of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, of any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object or thing. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.12 "Institutional Mortgagee" shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution specified by the Master Board.

1.13 "Lot" shall mean any lot or parcel of land shown on any recorded final subdivision plat, or amendment thereto, filed with respect to the Property to the extent such lots or parcels are part of the Property and shall also mean the entire balance of all real property which is from time to time subject to this Declaration, excluding, however, dedicated public rights-of-way and Common Facilities. If two or more contiguous Lots are held by the same Owner, such commonly owned Lots may, at the option of the Owner, be combined and treated as a single Lot for purposes of this Declaration, provided that the construction and location of Improvements thereon shall nevertheless be subject to the review and approval requirements set forth in this Declaration. References in this Declaration to a specific Lot shall refer to the particular Lot as set forth on the recorded subdivision plat for such Lot.

1.14 "Master Association" shall mean the Thanksgiving Point Master Owners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, and its successors and assigns.

1.15 "Master Board" shall mean the Board of Trustees of the Master Association.

1.16 "Master Common Facilities" shall mean those Common Facilities which are maintained by the Master Association.

1.17 "Member" shall mean every individual or entity who qualifies for membership in the Master Association pursuant to Article 2.

1.18 "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

1.19 "Mortgagee" shall mean the mortgagee or beneficiary under any Mortgage. A "First Mortgage" shall refer to a Mortgage whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

1.20 "Occupant" shall mean and include the Owners, their respective heirs, successors and assigns (including Mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.21 "Owner" shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Lot, including the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.22 "Park" shall mean Thanksgiving Point, Lehi, Utah.

1.23 "Permittees" shall mean all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.24 "Project" shall mean all of the Property, together with all of the Buildings and other Improvements constructed thereon.

1.25 "Property" shall mean the real property described on Exhibit "A" attached hereto and incorporated herein by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration.

1.26 "Secondary Declaration" shall mean a declaration of covenants, conditions, restrictions, and/or easements, or other similar document, pursuant to which easements and/or covenants are created which burden a portion of the Property for the benefit of Owners and which is recorded in the office of the County Recorder of Utah County, State of Utah with respect to a portion of the Property.

1.27 "Secondary Park" shall mean with respect to each Secondary Declaration, those portions of the Property that are encumbered by such Secondary Declaration.

1.28 "Secondary Owners Association" shall mean a non-profit corporation, or other entity, the members of which are owners of one or more Lots within the Property which is formed for the purpose of providing for the administration and enforcement of covenants, conditions and restrictions affecting such Lot(s) pursuant to a Secondary Declaration.

1.29 "Supplementary Declaration" shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions, or similar instruments recorded subsequent to this Declaration, which annex portions of additional property.

**ARTICLE 2**  
**MEMBERSHIP IN THE MASTER ASSOCIATION**

2.1 Membership. Every Owner shall be a Member of the Master Association subject to the terms of this Declaration, the Articles, and Bylaws. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and Bylaws of the Master Association to the extent the provisions thereof are not in conflict with this Declaration. Membership in the Master Association shall be appurtenant to each Lot and may not be separated from the interest of an Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership in the Master Association; provided, however, a Member's voting rights or privileges in the Common Facilities, or both, may be regulated or suspended as provided in this Declaration, the Articles, or the Bylaws. Not more than one membership in the Master Association shall exist with respect to ownership of a single Lot.

2.2 Transfer. The membership in the Master Association held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Owner's Lot and then only to the transferee or Mortgagee of such Lot. Any attempt to separate the membership in the Master Association from the Lot to which it is appurtenant shall be void and will not be reflected upon the books and records of the Master Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Lot, the Master Association shall have the right to record the transfer upon the books of the Master Association.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, and Bylaws.

2.4 Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each full acre of land plus a one-tenth (1/10) vote for each additional full one-tenth (1/10) acre of land in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, each such person shall be a Member and the vote for such land shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any such land than the number of votes that

one person owning the entire interest required for membership would be entitled to cast with respect to such land. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written consent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each full acre of land plus three-tenths (3/10) votes for each additional full one-tenth (1/10) acre of land in which it holds the interest required for membership; provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A Membership equals or exceeds the total votes outstanding in the Class B Membership, or

(2) December 31, 2020.

2.5 Approval of Members. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or any applicable Articles, Bylaws, or any contract executed by the Master Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

### ARTICLE 3 COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessments. The Owners, for each Lot owned by them, hereby covenant and agree to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Master Association: Regular Assessments and Special Assessments, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon, late charges, reasonable attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

3.2 Purpose of Assessments. The Assessments levied by the Master Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Members



in their use and enjoyment of the Property, and to perform the duties and exercise the powers of the Master Association enumerated in its Articles, Bylaws, this Declaration.

3.3 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Master Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Master Association. Not later than thirty (30) days prior to the beginning of each fiscal year of the Master Association, the Master Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Master Board shall then determine the amount of the Regular Assessment to be paid by each Member. Written notice of the annual Regular Assessments shall be sent to every Member. Each Member shall thereafter pay to the Master Association his Regular Assessment in installments as established by the Master Board. In the event the Master Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due.

3.4 Rate of Assessment. All Regular Assessments shall be fixed at a uniform rate for each full one-tenth of an acre of land within each Lot and may be collected at intervals selected by the Master Board.

3.5 Certificate of Payment. The Master Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Master Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Master Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

3.6 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein: (i) all properties dedicated to and accepted by, or otherwise acquired by a public authority; and (ii) the Common Facilities. However, no land or improvements devoted to business use shall be exempt from said Assessments.

3.7 Special Assessments. Special Assessments shall be levied by the Master Board against a Lot to reimburse the Master Association for costs incurred in bringing an Owner and such Owner's Lot into compliance with the provisions of this Declaration, the Articles, or the Bylaws, or any other charges designated as a Special Assessment in this Declaration, the Articles, or Bylaws, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Master Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by individual

Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

3.8 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Lots within the Property on the first day of the month following the recording of this Declaration in the office of the County Recorder of Utah County, State of Utah. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses, the Master Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

3.9 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Master Association is not properly exercising its duties and powers as provided in this Declaration.

3.10 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Master Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Facilities. All amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Master Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Master Association. Such reserves shall be deemed a contribution to the capital account of the Master Association by the Members.

#### ARTICLE 4 NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge equal to five percent (5%) of the late payment shall be levied and the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum. To the fullest extent permitted by law, the Master Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 4.2, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement and prosecution of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Member vests in the Master Association or its assigns, the right and power to bring all actions at law and/or for

lien foreclosure against such Member or Members for the collection of such delinquent Assessments.

4.2 Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Master Association in the office of the County Recorder of the County in which the Property is located. Said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, the late charge referred to in Section 4.1, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

4.3 Foreclosure Sale. Said Assessment lien may be enforced by sale by the Master Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Master Association may appoint as the trustee to conduct said deed of trust sale, any person or entity qualified to act as a trustee under the Utah deed of trust statutes. The Master Association, through its duly authorized agents, shall have the power to bid on the Lot, using Master Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

4.4 Curing of Default. Upon the timely payment, or other satisfaction, of (a) all delinquent Assessments specified in the notice of claim of lien, (b) all other Assessments which have become due and payable with respect to the Lot as to which such notice or claim of lien was recorded and (c) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Master Association or any other persons designated by the Master Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Master Association, to cover the costs of preparing and filing or recording such release.

4.5 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Master Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

## ARTICLE 5

## USE RESTRICTIONS

5.1 General Use Restrictions. Subject to the provisions of this Article 5, each Lot shall be used solely for the purposes and in the manner permitted under the applicable City zoning designation applicable to such Lot and also permitted under this Declaration and any Secondary Declaration applicable to such Lot.

5.2 Uses Specifically Prohibited. Notwithstanding anything to the contrary in Section 5.1, the enumerated uses specified above shall not be construed to include, either as a main or accessory use, and no Lot or part thereof shall be used for, any of the following uses.

- (a) Terminals, including truck or bus terminals, and other distribution facilities other than a commuter train facility providing passenger service between communities in the State of Utah.
- (b) Sand, gravel, and other extraction mining.
- (c) Manufacturing and assembly operations, except as otherwise provided.
- (d) Distillation, refining, smelting, agriculture or mining operations.
- (e) Fire sales, flea markets, pawn shops, businesses selling second hand goods, bankruptcy sales (unless pursuant to a court order), or auction operations.
- (f) Automobile, truck, trailer, or recreational vehicle or boat sales, leasing, storage, repair, or display.
- (g) Churches, synagogues, mosques or other places of worship.
- (h) Dry cleaning or laundry plants or facilities other than facilities used solely for the collection of soiled clothing and other fabrics from customers and distribution of clean clothing and other fabrics to customers.
- (i) Industrial or manufacturing uses.
- (j) Repair establishments other than establishments that repair jewelry as part of a jewelry store.
- (k) Junk or salvage yards.
- (l) Liquor stores.

(m) Cabinet and carpenter shops, except as they are a part of and function within a contemplated development which shall have shops where various crafts are manufactured, sold and taught and which carry the development title of a "Craft Village."

(n) Plumbing or sheet metal shops.

(o) Petroleum storage, sales, processing, or production.

(p) Automobile body and fender repair work.

(q) Skating rink, bowling alley, night club, teenage discotheque, discotheque, dance hall, amusement gallery, video game parlor, pool room, massage parlor, off-track betting facility, casino, card club, bingo parlor, or facility containing gaming equipment.

(r) Establishments (including, without limitation, bookstores) engaged in the business of selling, exhibiting or delivering pornographic or obscene materials (except to the extent that such materials are commonly sold by quality bookstores such as B. Dalton, Barnes & Noble, Brentano's and Waldenbooks).

5.3 Generally Prohibited Uses. Notwithstanding any other provisions of this Declaration, no use or activity shall be established, maintained, conducted or permitted on any portion of the Property which will cause or result in any:

(a) emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of the Lot where created (except to the extent that such fumes or odors are incidental to the normal operation of an upscale restaurant) or which may be detrimental to the health, safety, welfare or comfort of any Owner of any other person, to the condition of any other portion of the Property, or to any vegetation within the Property;

(b) discharge of fluids, gases, solid wastes or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property;

(c) discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Lot upon which the operation is being conducted;

(d) recurrent or continuous emission of sound or noise from any Lot which may be heard without instruments outside the boundaries of the Lot of origination;

(e) recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Lot of origination;

(f) physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area;

(g) persisting unsightly condition on any Lot which is visible from any street or any other portion of the Property;

(h) excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Lots; or

(i) violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body.

#### 5.4 Hazardous Materials.

(a) Restriction on Hazardous Materials. Any Hazardous Material brought upon, kept, used, generated, stored, treated, disposed of or released in or about any Lot, or soils or groundwater of same, by any Owner of such Lot, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition". In the event any Hazardous Condition occurs on a Lot, the Owner of such Lot shall promptly take all actions at its sole expense as are necessary to correct said violation to the satisfaction of the regulating entity.

(b) Indemnity: If an Owner of a Lot breaches the obligations stated in Section 5.4(a) above or if a Hazardous Condition exists at any time, then the Owner of such Lot shall indemnify, defend and hold the Owners of each other Lot within the Property and such other Owners' members, partners, officers, directors, shareholders, employees, and agents harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this Article 5.4 shall survive the termination of this Declaration.

5.5 Zoning Variances. No Owner of any Lot within the Property shall seek or obtain a zoning variance or a conditional use permit with regard to such Owner's Lot without the prior written approval of Master Board, nor shall any Owner request a rezoning of any portion of the Property without the prior written approval of the Master Board.

**ARTICLE 6**  
**DEVELOPMENT OF PROPERTY**

6.1 Approval of Secondary Declarations. No Owner shall cause a Secondary Declaration to be recorded with respect to the Property, or any part thereof without the prior written consent of the Master Board. The actions of the Master Board, through its written approval or disapproval of a proposed Secondary Declaration shall be conclusive and binding upon the Owner or other party who submitted a request for approval of a proposed Secondary Declaration.

6.2 Submittal and Approval Procedures for Proposed Secondary Declarations. Any Owner desiring approval of a proposed Secondary Declaration shall submit a written request to the Master Board and shall provide to the Master Board a copy of such proposed Secondary Declaration. If the Master Board fails to approve or disapprove in writing any proposed Secondary Declaration within thirty (30) days after receiving all requested information relating to such proposed Secondary Declaration, the proposed Secondary Declaration shall be deemed approved. The Master Board's approval of a proposed Secondary Declaration may be evidenced by the written certification of the President of the Master Association or other officer of the Master Association designated by resolution of the Master Board.

6.3 Amendment of Secondary Declarations. No amendment or modification of any Secondary Declaration shall be valid or effective until such amendment or modification has been approved in writing by the Master Board. If any Owner or group of Owners desires to amend or modify any Secondary Declaration, such Owner(s) shall first submit the proposed modification or amendment to the Master Board for the review of the Master Board and shall provide all other information and material requested by the Master Board. The Master Board's approval of a proposed modification or amendment to such Secondary Declaration must be evidenced by a written instrument signed the President of the Master Association (or other officer of the Master Association designated by resolution of the Master Board). If the Master Board fails to approve or disapprove in writing any proposed modification or amendment a Secondary Declaration within thirty (30) days after receiving all requested information relating to such modification or amendment, the request for the approval of such proposed modification or amendment shall be deemed to have been deemed to have been approved.

**ARTICLE 7**  
**DUTIES AND POWERS OF THE MASTER ASSOCIATION**

7.1 General Duties and Powers of the Master Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Master Association shall:



(a) enforce the provisions of this Declaration, the Articles and the Bylaws, and each Secondary Declaration by appropriate means and carry out the obligations of the Master Association hereunder, including without limitation, the expenditure of funds of the Master Association, the employment of legal counsel, and the commencement of actions;

(b) contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Master Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Master Association and its Members;

(c) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of condominium developments or planned unit developments to perform all or any part of the duties and responsibilities of the Master Association;

(d) establish and maintain a working capital and contingency fund in an amount to be determined by the Master Board;

(e) have the power of entry upon any Lot where necessary in connection with construction, maintenance or repair for the benefit of the Common Facilities, or the Owners; and

(f) acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the administration of the affairs of the Master Association or for the benefit of the Members.

7.2 Delegation of Powers. The Master Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws, provided, however, no such delegation, whether to a professional management company or otherwise shall relieve the Master Association of its obligation to perform such delegated duty.

## ARTICLE 8

### REPAIR AND MAINTENANCE

8.1 Duty to Repair and Maintain Common Facilities. Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, but only with respect to the Lot(s) owned by such Owner, is deemed to covenant and agree to at all times repair

and maintain the Lots in strict accordance with the applicable requirements of this Declaration and any Secondary Declaration applicable to such Lot(s).

8.2 Right of Master Association to Maintain Lots and Common Facilities. In the event that (a) any Owner fails to maintain the exterior of such Owner's Building or Lot or the Improvements thereon, or to install and thereafter maintain landscaping on such Lot in accordance with the requirements of this Declaration and any applicable Secondary Declaration, and (2) the Secondary Owners Association for the Secondary Park in which such Lot is located has failed, after thirty (30) days written notice from the Master Association, to commence and thereafter diligently pursue enforcement of appropriate remedies under the applicable provisions of the Applicable Secondary Declaration, the Master Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(b) Upon finding by the Master Board of a deficiency in such maintenance or installation, the Master Board shall give notice of deficiency to the responsible Owner and the Association for the Park in which such Owner's Lot is located, which notice shall briefly describe the deficiency and set a date for hearing before the Master Board or a committee selected by the Master Board for such purpose. The Master Board may delegate its power under this Section 8.2(b) to a duly appointed committee of the Master Association.

(c) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(d) Such hearing shall be conducted according to such reasonable rules and procedures as the Master Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Master Board or any such committee renders a decision against the responsible Owner, it shall further set a reasonable date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed by the Master Board, but a decision of the Master Board shall be final.

(e) If the deficiency continues to exist after the time limitation imposed by a final decision of the Master Board or any such committee, the Master Board or such committee may cause such maintenance or installation to be accomplished.

(f) In the event the Master Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(1) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Master Board or

such committee to select a day or days upon which such maintenance or installation work shall be accomplished.

(2) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(3) If said Owner does not select such day or days within said ten (10) day period, the Master Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) Unless the Owner and the Master Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(g) If the Master Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Lot.

## ARTICLE 9 INSURANCE

9.1 Types. The Master Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Facilities with a limit of not less than Two Million Dollars (\$2,000,000) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Property, shall specifically name the Master Association and each Secondary Owners Association as "additional insureds," and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Master Association, a Secondary Owners Association, or any of the Owners;

(b) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Master Association, and such fidelity bonds shall name the Master Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the

estimated annual operating expenses of the Master Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

9.2 Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Master Association, the Master Board, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

9.3 Other Insurance; Annual Review. The Master Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate-glass insurance, workmen's compensation, officers' and directors' liability, and errors and omission insurance.

9.4 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Master Association and any other insurance deemed necessary by the Master Association shall be a Common Expense to be included in the Regular Assessments levied by the Master Association.

## ARTICLE 10 ASSOCIATION DUTIES

10.1 Performance of Duties by Associations. Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, but only with respect to each Secondary Owners Association of which such Owner is a Member, is deemed to covenant and agree to take reasonable actions to cause such Secondary Owners Association(s) to promptly perform their respective duties and obligations as more particularly set forth in this Declaration and the Secondary Declaration(s) applicable to such Secondary Owners Association(s).

10.2 Right of Master Association to Perform Duties of Associations. In the event that any Secondary Owners Association (a "Defaulting Association") fails to perform any of the duties of such Defaulting Association as set forth in this Declaration and/or the applicable Secondary Declaration, the Master Association may perform such duty in the place of such Defaulting Association as hereinafter set forth.

(a) Upon finding by the Master Board of a deficiency in the performance of the duties of a Defaulting Association, the Master Board shall give notice of deficiency to the Defaulting Association, which notice shall briefly describe the deficiency and set a date for hearing before the Master Board or a committee selected by the Master Board for

such purpose. The Master Board may delegate its power under this Section 10.2(a) to a duly appointed committee of the Master Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Master Board shall adopt and which shall provide the Defaulting Association with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Master Board or any such committee renders a decision against the Defaulting Association, it shall further set a date by which the deficiency is to be corrected by the Defaulting Association. A decision of such committee may be appealed to the Master Board, but a decision of the Master Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Master Board or any such committee, the Master Board or such committee may cause such maintenance or installation to be accomplished.

(e) In the event the Master Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(1) The Defaulting Association shall have no more than ten (10) days following the receipt of written notice of such election from the Master Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished.

(2) The date which the Defaulting Association selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(3) If the Defaulting Association does not select such day or days within said ten (10) day period, the Master Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) Unless the Defaulting Association and the Master Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Master Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the Lots located in the Secondary Park of the Defaulting Association and the Owners of such Lots.

**ARTICLE 11**  
**RESTRICTIONS ON RIGHTS OF MEMBERS**

Except upon the prior written approval of at least seventy-five percent (75%) of the voting power of the Members, neither any Secondary Owners Association nor the Members of any such Secondary Association shall be entitled to do any of the following:

- (a) Dissolve either such Secondary Owners Association or abandon or terminate the maintenance of any of the Common Facilities maintained by such Secondary Owners Association;
- (b) Amend a material provision of the Secondary Declaration applicable to such Secondary Owners Association; or
- (c) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Facilities shall not require such approval.

**ARTICLE 12**  
**RIGHTS TO MASTER COMMON FACILITIES**

12.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Master Common Facilities, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

- (a) The right of the Master Association, with respect to all Master Common Facilities, to establish reasonable rules and regulations pertaining to the use of the Master Common Facilities; provided, however, that such rules and regulations shall be uniform in their application to all Members, and do not materially interfere with the reasonable and anticipated economic use of any Lot.
- (b) The right of the Master Association subject to the approval rights of Mortgagees pursuant to Article 14 hereof, to dedicate or transfer all or any part of the Master Common Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No

such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Master Common Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

(c) The right of the Master Association, with respect to the Master Common Facilities, to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Master Association, together with the right of the Master Association to convey, lease or otherwise transfer, subject to the provisions of subsection 12.1(b) above, all or any portion of the Common Facilities maintained by such Association to said district.

12.2 Waiver of Use. No Member may exempt such Member from personal liability for Assessments duly levied by the Master Association, nor release the Lot owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Master Common Facilities, or the abandonment of his Lot.

### ARTICLE 13

#### NATURE OF EASEMENTS AND RIGHTS GRANTED

13.1 Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the benefitted portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominate estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

13.2 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Lots;
- (b) Create mutual equitable servitudes upon each Lot and the Common Facilities in favor of the other Lots;
- (c) Constitute covenants running with the land; and
- (d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such

portion is affected or bound by the easement, covenant, restriction or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

#### **ARTICLE 14** **RIGHTS OF LENDERS**

14.1 Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Master Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Master Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Master Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Master Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Master Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Master Association hereunder shall not be affected by the failure to deliver a notice to the Master Board. Any notice or request delivered to the Master Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

14.2 Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

14.3 Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale, shall not be obligated to cure any breach of the provisions of this Declaration which occurred before such Mortgagee or transferee acquired title if (a) such breach is noncurable or of a type which is not practical or feasible to cure, and (b) such Mortgagee did not have notice of such breach at the time Mortgagee acquired its lien or security interest in the Lot or Lots. The determination of the Master Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.



14.4 Relationship With Assessments Liens.

(a) The lien provided for in Article 4 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment becomes due.

(b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligation to pay for any Assessment levied pursuant to this Declaration, even if that Owner re-obtains its interest in the Lot pursuant to Events of Default.

14.5 One Hundred Percent Vote of Institutional Mortgagees. Except upon the prior written approval of sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Master Association nor the Members shall be entitled to do any of the following:

(a) Dissolve the Master Association; or

(b) Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of this Article or any other rights granted specifically to the Mortgagees pursuant to any other provision of this Declaration; or

(c) Effectuate any decisions to terminate professional management and assume self-management of the Property; or

(d) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Master Common Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Master Common Facilities shall not require such approval.

14.6 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Master Association, be entitled to:

(a) Inspect the books and records of the Master Association during normal business hours; and

(b) Receive the annual audited financial statement of the Master Association ninety (90) days following the end of the Master Association's fiscal year; and

(c) Receive written notice of all annual and special meetings of the Members or of the Master Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Master Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Master Board or of the Members for any purpose or to vote at any such meeting; and

(d) Receive written notification from the Master Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Institutional Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Master Association; provided, however, the Master Association shall only be obligated to provide such notice to Institutional Mortgagees whose written request therefor to the Master Association specifies the Lot or Lots to which such request relates.

14.7 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

14.8 Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee of such Owner or his representative shall have

the right, upon giving written notice to such defaulting Owner and the Master Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

## ARTICLE 15 GENERAL PROVISIONS

15.1 Enforcement. The Master Association or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that the Master Association shall have the exclusive right to enforce assessment liens. The Master Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. Failure by the Master Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

15.2 Counterpart Signatures, and Consents. This Declaration may be executed in Counterparts with the signatures of the Members affixed to separate documents which may thereafter be combined into one Declaration Instrument.

15.3 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

15.4 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

15.5 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Master Association or any Member, their respective legal representatives, heirs, successors and assigns,

for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the then current Members has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

15.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Park and for the maintenance of the Property and the Master Common Facilities. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

15.7 Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees and/or First Mortgagees pursuant to Article 14 hereof, or otherwise this Declaration may be amended only by the affirmative vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members; provided, however, any amendment or modification of the Articles 3, 4, 6, 8, and 10 hereof shall require the prior written approval of not less than seventy-five percent (75%) of the voting power of the Class A Members. An amendment or modification shall be effective when executed by the President and Secretary of the Master Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Utah County, Utah.

15.8 Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and neuter.

15.9 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Master Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

15.10 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Master Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

15.11 Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Master Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within Utah County, Utah, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners, on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Master Association by such Mortgagee or such contractor for the purposes of notice.

15.12 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Property and each and every Lot and portion thereof. No Member makes any warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

15.13 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Master Association.

15.14 Nonliability of Officials. To the fullest extent permitted by law, neither the Master Board, the Architectural Control Committee or any other committee of the Master Association or any member of such Master Board or committee shall be liable to any Member or the Master Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Master Board, committees or persons reasonably believed to be the scope of their duties.

15.15 Leases. Any agreement for the leasing or rental of a Lot (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, and the Bylaws. Said lease shall

further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Lot shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, and Bylaws.

IN WITNESS WHEREOF, the Owners have executed this instrument the day and year first herein above-written.

**DECLARANT:**

**THANKSGIVING POINT DEVELOPMENT,  
L.C.** a Utah limited liability company

By: *Karen Beckman*  
Its: *Manager*

**OWNERS:**

**NORTH AMERICAN MUSEUM OF ANCIENT  
LIFE, L.C.,** a Utah limited liability company

By: *Michael Munsen*  
Its: *Manager*

STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

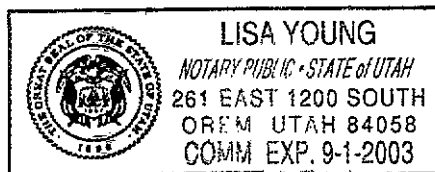
The foregoing instrument was acknowledged before me this 24 day of November, 1999,  
by Karen Ashton, the Manager of THANKSGIVING POINT  
DEVELOPMENT, L.C., a Utah limited liability company.

Lisa Young  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Residing At: \_\_\_\_\_

STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

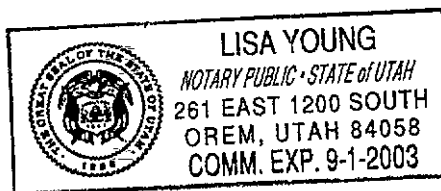


The foregoing instrument was acknowledged before me this 24 day of November, 1999,  
by Ralph W. Rasmussen, the Manager of NORTH AMERICAN MUSEUM  
OF ANCIENT LIFE, L.C., a Utah limited liability company.

Lisa Young  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Residing At: \_\_\_\_\_



G:\CDN\PUBL\SET\DEED\233607-4



EXHIBIT "A"DESCRIPTION OF PROPERTY

That Real Property owned by Thanksgiving Point, L.C. located between the Denver & Rio Grande Western Railroad and Interstate 15, located in Lehi, Utah County, State of Utah, more particularly described as follows:

Beginning at a point on the Westerly right-of-way line of a Frontage Road, 40.00 feet opposite Engineer Station 88+30.08, said point being located N89°58'00"W along the 1/4 Section line 140.24 feet from the East 1/4 Corner of Section 36 T4S, R1W, S.L.B. & M.; thence S41°44'00"E along said right-of way 1,799.48 feet; thence S49°35'37"W 1,387.49 feet; thence S34°11'31"W 481.54 feet; thence S0°44'30"E 667.32 feet; thence S57°47'29"E 130.97 feet to a rebar & cap (fnd); thence S0°11'28"W 90.21 feet to a fenceline; thence S89°10'40"W along said fenceline 41.53 feet to a concrete post at the Easterly right-of-way line of the Denver & Rio Grande Western Railroad; thence Northwesterly along the arc of a 7,850 foot radius non-tangent curve (radius bears: N48°11'45"E) 342.51 feet through a central angle of 2°30'00" (chord: N40°33'15"W 342.48 feet); thence N39°18'15"W along said Railroad 5,279.14 feet; thence N40°05'30"E along a fenceline 1,130.20 feet to the Southwesterly line of that Real Property described in Deed Book 3004 Page 743 of the Official Records of Utah County; thence S44°25'10"E along said property 469.96 feet to the Northwesterly line of that Real Property described in Deed Book 3621 Page 351 of the Official Records of Utah County; thence S39°28'50"W along said property 459.01 feet; thence S39°18'15"E 1,357.30 feet to a rebar & cap (found) at the 1/4 Section line; thence S89°58'00"E along the 1/4 Section line 1,993.62 feet to the point of beginning.

Said Parcel contains 176.92 acres and is more particularly shown on a Survey Plan dated 1/20/99 by LEI Consulting Engineer, Spanish Fork, Utah.