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SAGE VALLEY RETAIL AND RESIDENTIAL CENTER
West Valley, Utah

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
SAGE VALLEY RETAIL AND RESIDENTIAL CENTER

Prepared by



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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SAGE VALLEY RETAIL AND RESIDENTIAL CENTER

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the “Declaration”) is made as of the 14 day of May 2021 (the “Effective Date”) by West Valley-JMYL, LP, a California limited partnership, BWF Stay SV Property Owner, LLC, a Utah limited liability company, HZ Props Re, Ltd., a Texas limited liability company, and JHP, LLC, a Utah limited liability company (sometimes collectively the “Declarants”).

RECITALS

A. The Declarants are the owners of certain real property in the City of West Valley (the “City”), County of Salt Lake, State of Utah, as more particularly described on Exhibit A (the “Retail and Residential Center”) and depicted on the Site Plan and Lots for the Retail and Residential Center approved by the City on Exhibit B (the “Site Plan” and “Depiction of the Lots”), both attached hereto and incorporated herein by this reference, as follows:

- West Valley-JMYL, LP is the owner of Lots 3, 4, 5, and 6 in the Retail and Residential Center; and
- BWF Stay SV Property Owner, LLC is the owner of Lots 1, 8, and 9 in the Retail and Residential Center; and
- HZ Props Re, Ltd. is the owner of Lot 2 in the Retail and Residential Center; and
- JHP, LLC is the owner of Lot 7 in the Retail and Residential Center.

B. The Declarants intend to develop their individual lots and operate the Retail and Residential Center as a commercial retail mixed use shopping complex, and as a framework for such development, the Declarants wish to impose certain easements upon the Retail and Residential Center, and to establish certain covenants, conditions, and restrictions with respect to the Retail and Residential Center, for the mutual and reciprocal benefit and complement of the Retail and Residential Center and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the foregoing, and the terms and conditions set forth herein, and other good and valuable consideration, the Declarants hereby declare, adopt, establish and impose the following easements, covenants, conditions, and restrictions which shall be applicable to the Retail and Residential Center, and hereby declares that the Retail and Residential Center shall be held, transferred, improved, sold and conveyed subject to the following, covenants, conditions, restrictions and easements, which are for the purpose of protecting the value and desirability of the Retail and Residential Center, and which shall run with the land and shall be binding upon; and inure to the benefit of, all the Parcels (defined below) comprising the Retail and Residential Center and all parties having rights, title or interest in or to the Retail and Residential Center or any part thereof, and their heirs, successors, and assigns. By accepting the transfer or conveyance of title to, or any leasehold interest in, any Parcel within the Retail and Residential Center, such transferee accepts and agrees to the terms and conditions of this Declaration and shall have a privity relationship with the Declarants under this Declaration.

ARTICLE 1
DEFINITIONS

1.1 “Budget” shall mean the budget for each calendar year for project Common Expenses to be prepared and distributed to Owners and Occupants as set forth in this Declaration. Depending on the date Common Expenses shall be first incurred, the initial Budget may be for a partial calendar year.

1.2 “Building” shall mean any structure constructed in the Retail and Residential Center intended for occupancy and use of customers of the Retail and Residential Center, excluding Outdoor Occupant Improvements.

1.3 “Building Area” shall mean the specific areas of the Retail and Residential Center within which Buildings may be constructed, placed, or located. Building Areas are designated on the Site Plan by the building limit lines shown thereon.

1.4 “Common Area” shall mean all portions of the Retail and Residential Center not shown as a Lot on the Site Plan and shall include all areas that encompass Shared Parking that is not associated with or reserved to a specific Lot, all shared aisles to access the Shared Parking and/or to enter or exit the Retail and Residential Center, and all immediate areas that are contiguous to the Shared Parking that are intended for common use.

1.5 “Common Expense” shall mean any and all costs and expenses incurred in the ownership, operation and maintenance, including refurbishment, of the Common Area and Improvements located thereon but excepting Outdoor Occupant Improvements.

1.6 “Construction” shall mean the following, without limitation:

- a. the initial construction, renovation, remodeling, installation, erection or expansion of any Building, structure, Signs or other Improvements, including utility facilities; and
- b. the demolition or destruction, by voluntary action, of any Building, structure or other Improvements; and
- c. the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern; and
- d. landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and
- e. the construction, installation, erection, placement or expansion of any temporary or other nonpermanent structure, improvement or facility such as, without limitation, any tent, shed, trailer, or outdoor storage area or facility; and
- f. any change or alteration of any previously approved Improvement to property including any change of exterior appearance, color or texture.

1.7 “County” shall mean Salt Lake County, in the State of Utah.

1.8 “Covenants, Conditions and Restrictions” shall mean the covenants, conditions, restrictions, rules, agreements, provisions, easements, constraints, and limitations described in Recital B.

1.9 “Cross Access and Parking Easement” shall mean the Easement described in Section 5.2.

1.10 “Declarants” shall have the definition given it in Recital A of this Declaration, provided that upon any sale, conveyance or transfer of a Declarant’s entire property within the Retail and Residential Center, the rights and obligations of the transferring the Declarants under this Declaration shall terminate (subject to any provision to the contrary herein) and the new owner of such property shall become a Declarant. If a Declarants transfer only a portion of such property, such Declarant remains a Declarant, and a purchaser of a portion of a Declarant’s property does not become a Declarant.

1.11 “Development Agreement” shall mean the Development Agreement, if any, between the Declarants and the City as amended from time to time, regarding development of the Retail and Residential Center property as recorded at the Salt Lake County Recorder’s Office.

1.12 “Drainage Easement” shall mean the Easement described in Section 5.3.

1.13 “Easement” or “Easements” shall mean any easement or, as the context shall require, all easements granted pursuant to the provisions of this Declaration.

1.14 “Exclusive Uses” shall mean those certain use restrictions set forth in Exhibit E, attached hereto and incorporated herein by this reference.

1.15 “Fire Access Easement” shall mean the easement described in Section 5.9.

1.16 “Governmental Authority” shall mean any federal, state, or local governmental or quasi-governmental agency(ies) or authority(ies) having applicable jurisdiction, including without limitation any local district(s), special services district(s), assessment district(s), special improvement district(s) (or similar organized unit(s)) created for the purpose of administering, financing, paying for, controlling, or overseeing all or any portion of any public amenities or facilities, and/or any other applicable subject matter.

1.17 “Ground Leased Portion” shall mean any portion of the Retail and Residential Center subject to a ground lease.

1.18 “Ground Lessee” shall mean any person or entity who has entered into a ground lease agreement with an Owner for any portion of the Retail and Residential Center.

1.19 “Hazardous Materials” means any substance or material which is defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “acutely hazardous wastes,” “restricted hazardous waste,” “toxic substances,” or “known to cause cancer or reproductive toxicity” (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources (“Environmental Law”).

1.20 “Improvements” shall mean any and all Buildings, asphalt paving, parking areas, driveways, entries, curb, gutter, sidewalks, Signs, Project Signs, Outdoor Occupant Improvements, storm water detention facilities, utility lines of all descriptions and all other improvements constructed or installed in the Retail and Residential Center.

1.21 “Landscaping” shall mean lawn, ground cover, rock walls, retaining walls, flowers, bushes, shrubbery, trees and other similar landscaping features which may be complemented with, or include, earth

berms, masonry or similar materials and the real property located thereunder, together with all sprinkling or other irrigation systems related thereto.

1.22 “Law” or “Laws” shall mean all applicable federal, state and local (whether city, City, county or otherwise) laws, rules, ordinances, codes and regulations of every governmental body having jurisdiction over the Retail and Residential Center, including Environmental Law.

1.23 “Lease” shall mean any lease, sublease, ground lease, rental agreement, license, concession or other arrangement or agreement, however denominated, which grants a party the right to occupy a Building, or a portion of a Building located in the Retail and Residential Center, or any Ground Leased Portion.

1.24 “Lot” shall mean a specifically described portion of the land comprising the Retail and Residential Center which constitutes a legal parcel as shown on the Subdivision Plat. The designation of a Lot by a number shall refer to the Lot numbers set forth on the Subdivision Plat. “Lot” shall mean each portion of the Project described on Exhibit A and depicted on Exhibit B, attached hereto and incorporated herein by this reference, which may be separately transferred or conveyed under the laws of the State of Utah.

1.25 “Lot Owner” shall mean the recorded owner of a Lot.

1.26 “Main Drive Aisles” shall mean the main drive aisles located on the Property as identified on Exhibit D, attached hereto and incorporated herein by this reference.

1.27 “Main Drive Aisles Easement” shall mean the Easement located on the Main Drive Aisles as identified on Exhibit D and described in Section 5.6.

1.28 “Majority Vote” shall mean a simple majority vote of the Declarants, based on the following voting rights: (a) West Valley – JYML, LP (or its assignees) – four (4) votes; (b) BWF Stay SV Property Owner, LLC – three (3) votes; (c) HZ Props Re, Ltd. – one (1) vote; and (d) JHP, LLC – one (1) vote for a total of nine (9) votes. Therefore, a Majority Vote shall result if a matter is submitted to the Declarants, and the proposed decision receives five (5) votes or more in favor of such decision.

1.29 “Management Agreement” shall have the meaning given to it in Section 4.1.

1.30 “Management Fee” shall have the meaning given to it in Section 4.12 below.

1.31 “Manager” shall mean the party selected by the Declarants pursuant to Section 4.1 and who is responsible for the maintenance and operation of the Common Area as provided in this Declaration.

1.32 “Occupant” shall mean any person, corporation, partnership, limited liability company or any other entity, public or private, that is entitled from time to time to occupy any portion of the Retail and Residential Center, whether as an Owner, tenant, lessee, Ground Lessee, licensee, invitee or other status, and whether under an ownership right, Lease, sublease, rental agreement, license, easement, concession or other arrangement or agreement, however denominated.

1.33 “Outdoor Ground Leased Portion” shall mean a Ground Leased Portion excluding any Building located on such Ground Leased Portion.

1.34 “Outdoor Occupant Improvements” shall mean any improvements constructed or located in the Retail and Residential Center used exclusively by the patrons, customers or invitees of an Occupant

of a Building, such as service facilities or any drive-up or drive-through customer service facilities. Service facilities shall include, by way of illustration and not of limitation, dock and loading areas; dumpster enclosures; trash compactors and related facilities; cart collection enclosures; customer pick-up, ATM, teller window or other service areas and the accompanying driveways to access such facilities; canopies; patios; sitting or eating areas; and other such facilities located adjacent to or used in connection with a specific Building. All such facilities shall be deemed to be part of the premises occupied pursuant to the Lease applicable to the Building.

1.35 “Owner” shall mean any person or entity then having a fee record title ownership interest to a Parcel in the Retail and Residential Center and applies to each Declarant.

1.36 “Owner Representative” shall mean the representative for the Lot Owners who shall be elected annually by a majority vote of the then Lot Owners, with each Lot allocated one vote to the Lot Owner.

1.37 “Parcel” shall mean each legal Lot within the Retail and Residential Center, as depicted on the copy of the Subdivision Plat.

1.38 “Pro Rata Share” shall mean an Owner’s share of Common Expenses which shall be a fraction, the numerator of which is the square footage of the Owner’s Parcel, and the denominator of which is the total square footage of the Retail and Residential Center.

1.39 “Project” shall mean the Property, together with the Improvements and the Landscaping which are now located upon or may in the future be located upon the Property.

1.40 “Property” shall mean the real property described in Recital A, less any portion thereof that shall be transferred, conveyed, granted, deeded or otherwise dedicated to the County and/or any Governmental Authority for public use.

1.41 “Project Sign” shall mean any and all pylon or monument sign(s) placed or constructed within the Retail and Residential Center which advertise(s) either the Retail and Residential Center generally or multiple Occupants of Buildings in the Retail and Residential Center.

1.42 “Retail and Residential Center Parties” shall mean the customers, invitees, licensees, contractors, agents and employees of an Owner or Occupant.

1.43 “Shared Parking” shall mean the portion of the Project depicted on Exhibit C, attached hereto and incorporated herein by this reference. Shared Parking shall be limited to use by the Owners and Occupants of Lots 1, 2, and 3 and their guests and invitees.

1.44 “Signs” shall mean any pylon, monument or exterior building sign placed or constructed within the Retail and Residential Center or upon any Building within the Retail and Residential Center and any signs visible through any window or otherwise from the exterior of any Building.

1.45 “Site Plan” shall mean the general depiction of the improvements which are to be constructed upon the real property described on Exhibit A and which shall be the Retail and Residential Center. The Site Plan attached as Exhibit B shall be a general depiction of improvements for general identification and administration of the Retail and Residential Center. The Site Plan may be amended only in accordance with Article 16.

1.46 “Subdivision Plat” shall mean the subdivision plat for Retail and Residential Center, as same shall be recorded in the official records of the Salt Lake County Recorder’s Office for the State of Utah. Notwithstanding the foregoing, a copy of the final proposed Subdivision Plat is attached as Exhibit C attached hereto and incorporated herein by this reference.

1.47 “Temporary Construction Easement” shall mean the easement described in Section 5.7.

1.48 “Utilities” shall include without limitation, gas, electricity, storm and sanitary sewer, domestic water, fire sprinkler services, irrigation water and telephone services.

ARTICLE 2 **SUBMISSION AND IMPROVEMENT OF PROPERTY**

2.1 Declaration. The Declarants hereby declare that the Property and any and all Improvements that shall at any time be located upon any portion of the Property shall be held, sold, conveyed, transferred, designed, constructed, operated, used, maintained, leased, subleased and occupied subject to the Covenants, Conditions, and Restrictions, together with all other terms and provisions, set forth in this Declaration, which are for the purpose of (among other things) establishing mutual easements, covenants and restrictions to provide for the common management and operation of certain portions of the Project, to place certain use restrictions and/or limitations on the Property and to protect and preserve the value of the Project.

2.2 Covenants to Run with Land. This Declaration and all of the Covenants, Conditions, and Restrictions and other provisions contained herein are intended to be, and shall constitute covenants which shall run with the land and which shall be binding upon and shall inure to the benefit of the Declarants, each respective Owner and Occupant, and any other party which has or may acquire any interest in or to any portion of the Project and each respective grantee, transferee, heir, devisee, personal representative and successor and assign thereof. Any party which may acquire an interest in any portion of the Project, or which may occupy any portion of the Project, shall be deemed to consent and agree to be bound by the Declaration and all of the Covenants, Conditions, and Restrictions and other terms and provisions herein contained.

2.3 Approval of Improvements. Except as shown on the attached Site Plan, all Improvements to be constructed within the Retail and Residential Center shall conform to (i) all applicable local zoning laws, regulations, and ordinances (the “Laws”); (ii) any prohibited uses identified in Section 3.2; and (iii) any exclusive use restrictions identified in this Declaration and specifically on Exhibit E attached hereto. The Owner of the Parcel upon which a Building and/or Outdoor Occupant Improvements are to be constructed, shall pay or cause to be paid, any and all costs and expenses incurred in the design, permitting, entitlement, and construction of such Building and/or Outdoor Occupant Improvements. All Improvements to any part of the Common Area shall be subject to approval by a Majority Vote.

2.4 Construction. All Construction must be diligently prosecuted to completion, shall be performed in a workmanlike manner and in accordance with the requirements of all governmental authorities having jurisdiction over such work and shall be performed in a manner that does not unreasonably interfere with the operations of any business within the Retail and Residential Center. As applicable, staging of Construction, including on-site trailers, shall be accomplished in a manner and in those areas within the Retail and Residential Center as specifically identified by the Declarants and as otherwise specifically provided herein. If an Owner or an Occupant commences Construction or exterior remodeling of a Building within the Retail and Residential Center, but such Construction or exterior remodeling ceases prior to the completion of the Building for a period exceeding thirty (30) days, the Manager may take such action as it reasonably determines to be in the best interest of the Retail and Residential Center and its customers, including the construction of a barricade around such Building; provided that the Manager shall

follow any reasonable action directed by a Declarant upon whose Parcel the Building is located. Upon completion of any such work by the Manager, the Owner upon whose Parcel the Building is located shall reimburse the Manager upon demand for all amounts expended in connection with such work. In the event such Owner fails to so reimburse the Manager, the Manager shall have the lien and other rights set forth in Article 12.

2.5 Construction Standards. All Buildings constructed in the Retail and Residential Center shall be constructed to comply with all governmental requirements which arise by reason of such use of the Buildings to be constructed.

2.6 Liens. No Owner or Occupant shall permit a mechanic's or materialmen's lien to be filed against any Parcel or any portion thereof in the Retail and Residential Center as a result of work performed on, or materials provided to, any other Parcel in the Retail and Residential Center. In the event any such liens are filed against any such Parcel or portion thereof, the Owner of the Parcel on which such work was performed or for which such materials were provided shall immediately take the necessary steps to have such lien released. In the event the Owner of the Parcel for which such work was performed or for which such materials were provided fails to so remove or release such lien against the other Owner's Parcel, and the Owner of the Parcel against which the lien is filed incurs any expenses, damages or costs, including attorney's fees, in connection with or relating to releasing such lien, the Owner of the Parcel for which such work was performed or for which such materials were provided shall promptly reimburse all such costs, fees and expenses. Failure to reimburse such costs, fees and expenses shall provide the Owner to be reimbursed with the lien and other rights set forth in Article 12.

2.7 Maintenance of Parcels. The Declarants may develop and construct the Retail and Residential Center in phases. Each Owner shall continuously maintain all Improvements located on their Lot in a well-kept appearance of a first-class Retail and Residential Center. After the initial construction of the parking area and drive aisles servicing the Retail and Residential Center, all portions of each Parcel shall be free of weeds, dust and debris, and otherwise adequately maintained. Unless performed by the Manager pursuant to Article 4, each Owner shall maintain and repair, or shall cause to be maintained and repaired, their own Parcels (including the Common Area located thereon) in a first-class condition and shall keep, or cause the same to be kept, in good condition and repair. Each Owner shall be responsible for the Construction, maintenance and/or repair of any Buildings located on such Owner's Parcel, and costs and expenses related to such Construction, maintenance and/or repair shall be the sole cost and expense of such Owner. Costs and expenses incurred in the maintenance and repair of Improvements which constitute Common Area (excepting Outdoor Occupant Improvements) shall be allocated among all Owners pursuant to Article 4. Each Owner shall be responsible for the exterior and interior maintenance of any and all Buildings and any and all Improvements, including sidewalks, parking lots, lighting, landscaping and driveways, located on said Owner's Lot except as otherwise set forth in this Declaration. Without limiting the generality of the foregoing, each Owner shall be responsible for snow removal on their Lot.

ARTICLE 3 **USE**

3.1 Generally. The Retail and Residential Center is to be used only as permitted by this Declaration and by Laws applicable to the Retail and Residential Center. Each Parcel shall be used only for lawful purposes and in conformance with all Laws, including, without limitation, zoning and land use laws and ordinances, parking ratios, use, building height and setback requirements, landscaping, etc. No Parcel shall be used in any manner so as to constitute a nuisance, and no Owner of any Parcel shall permit the accumulation of unsightly trash or debris or to allow graffiti to remain on an Owner's Building. Subject to Majority Vote, the Manager shall have the right from time to time to post and promulgate reasonable rules and regulations for the Retail and Residential Center, which shall be uniformly enforced against all

the Owners and Occupants. The obligations set forth above shall be a restriction running with the land and shall not be affected by the status of any Owner that would otherwise exempt such Owner from complying with any municipal Laws. The creation and use of a drive through on a specific Parcel that is for the sole purpose of serving food and/or beverages shall not be deemed a nuisance.

3.2 Prohibited Uses. No use shall be permitted in the Retail and Residential Center which is not permitted by the Laws.

3.3 Common Area Use. The Common Area shall be used for pedestrian and vehicular access and ingress to, circulation and traffic and parking within, and egress from the Retail and Residential Center by Owners, Occupants and their respective Retail and Residential Center Parties solely for and in relation to the commercial purposes of the Owners and business Occupants of the Buildings, including the servicing and supplying of such businesses. In addition, the Common Area may be used:

a. on a temporary basis as a staging area in connection with the Construction and repair of any Buildings and/or Common Area in the Retail and Residential Center so long as such use does not occupy more area than is reasonably required nor unreasonably restrict access to and from or the conduct of business within the Buildings in the Retail and Residential Center or access to and from the adjacent streets; and

b. in connection with the construction, maintenance and repair of Utility Systems (defined in Section 5.4), so long as such activity is undertaken in strict compliance with the requirements of Section 5.4; and

c. for any other use required by Law.

The parking portion of the Common Area shall be available for use by all Owners, Occupants, and their respective Retail and Residential Center Parties and no person shall otherwise limit the use or availability of such portion for use, or the access to or from such portion, by such users except as permitted by this Declaration. No person other than Owners, Occupants and their respective Retail and Residential Center Parties shall be permitted to use and/or park in the Common Area. Without the written permission of each Declarant, Owner and Occupant of all Buildings, no person, Owner, or Occupant may use the Common Area for (i) any purpose not related to or in furtherance of the commercial purposes of the Owners or business Occupants of the Buildings, including, without limitation, "park and ride" use or the like; (ii) advertising any business not part of the Retail and Residential Center (other than advertising which is incidental to the permitted use of the Common Area by Owners, Occupants and their respective Retail and Residential Center Parties), including, without limitation, parking a vehicle on the Common Area repeatedly, overnight, or for an extended period of time with the primary purpose of advertising a business not part of the Retail and Residential Center; or (i) conducting business from a kiosk or vehicle, including, without limitation, a "food truck." Except as specifically provided otherwise in this Declaration, no Building or structure may be placed, erected or constructed within the Common Area. No Owner or Occupant shall construct any fence or other barrier along any property line. Such restriction shall not be applicable to landscape islands and other traffic control devices shown on the Site Plan. Subject to the approval of a Majority Vote, each Declarant, and each Owner, shall have the right to reconfigure the Common Area located on its property, provided however, any such reconfiguration must be made pursuant to a modified Site Plan approved by the City in accordance with applicable City Laws and the Development Agreement.

3.4 Parking. The number of parking spaces and the drive aisles maintained on each Parcel and the size and configuration thereof shall be as depicted on the Site Plan and approved by the Declarants and shall at all times maintain the minimum number of parking spaces required by City Laws and the

Development Agreement for the Retail and Residential Center. Any change to the drive aisles in the Retail and Residential Center shall require the prior written approval of the Declarants, and evidence from the Owner seeking the change that either (i) the City has approved or will approve such change, including any resulting or associated changes to landscaping or site-related improvements; or (ii) the change complies with all applicable City Laws and the Development Agreement. No such approval shall be deemed granted unless evidenced by an amendment to this Declaration, which amendment shall be duly recorded in the official records of Salt Lake County, Utah. Such amendment shall attach and incorporate an amended Site Plan approved by the City showing the reconfiguration of the drive aisles. The Declarants may withhold their approval of the reconfiguration of the drive aisles for any reason or for no reason in its sole, subjective discretion. There shall be no charge or other validation for parking in the Common Area. No private agreements or arrangements shall be entered into or made by the Declarants, Owners and/or Occupants, and their agents, successors or assigns, which would encumber or restrict available parking for any given Parcel or the Retail and Residential Center to less than the minimum number of parking spaces required by applicable City Laws and the Development Agreement.

3.5 Employee Parking. Specific areas within the Common Area of the Retail and Residential Center to be used for motor vehicle parking purposes by employees of Occupants of the Retail and Residential Center may be designated from time to time by the Manager. In the event employee parking areas are designated as provided herein, employees of any Owner or Occupant of any Building in the Retail and Residential Center shall use only those portions of the Common Area so designated for such employee motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or Occupant in the Retail and Residential Center.

3.6 Lighting. Subject to applicable Laws, artificial lighting for the Common Area and any Outdoor Ground Leased Portion shall remain on during all hours of darkness while a majority of the businesses in the Retail and Residential Center are open for business. The costs and expenses of such lighting for the Common Area (the "Common Area Lighting Expense"), including the cost of maintenance and replacement of light fixtures and related equipment, shall be included as a Common Expense, and the costs and expenses of such lighting for any Outdoor Ground Leased Portion shall be borne by the applicable Ground Lessee. All Occupants shall be responsible to ensure that security lights or other lighting required by governmental authority remain illuminated as desired by each Occupant or as required by applicable governmental requirement, if any.

3.7 Owner's Parcel. The Owner of each Parcel shall use and cause the Common Area on its Parcel to be used exclusively for the uses specified herein and, in such manner, as will not unreasonably interfere with the primary purpose of the Common Area, which is to provide for parking and access for the Owners, Occupants, and their respective Retail and Residential Center Parties, and for the servicing and supplying of such businesses. There shall be no sale or display of merchandise of any kind in any portion of the Common Area.

3.8 Exclusive Use Restrictions. Use of the Property is further restricted by the Exclusive Uses set forth on Exhibit E.

3.9 Compliance with Law. No portion of the Project may be occupied for any use which is in violation of any applicable ordinances, laws and regulations of any Governmental Authority.

3.10 No Subdivision of Lot. No Lot shall be further subdivided without the prior written consent of the Declarants for so long as a Declarant owns any portion of the Property (in its sole discretion). Notwithstanding the foregoing, the Declarants shall have the right, subject to applicable laws and ordinances but without the consent being required of any Owner, to relocate or otherwise reconfigure the boundary lines of any Lot, to eliminate Lots, to create new Lots through the subdivision or reconfiguration

of one or more existing Lots and to otherwise design and develop the Lots within Project as the Declarants shall determine; provided, however, that such rights shall be applicable only to Lots which shall be owned by a Declarant at the time of such adjustments. Nothing contained herein shall be construed to grant the Declarants the right to alter the boundary of any Lot not owned by a Declarant without the express written consent of the Owner of such Lot.

ARTICLE 4 **MAINTENANCE**

4.1 Manager. The Retail and Residential Center shall be managed by a Manager shall be selected by a Majority Vote. The terms and conditions regarding the responsibilities and authority of the Manager and the compensation to be paid to the Manager shall be set forth in a written agreement between the Manager and the Declarants (the "Management Agreement"), and such agreement shall be approved by a Majority Vote before it is executed by the Owners. If the Management Agreement is not approved by a unanimous vote, but by Majority Vote, then those Owners who voted in favor of the Management Agreement shall have authority to execute the Management Agreement on behalf of all of the Owners, and all owners, including those Owners who did not approve or execute the Management Agreement, shall be bound by and to all of the terms and conditions of the Management Agreement.

4.2 Construction and Maintenance of Main Drive Aisles. Lot 1 Owner shall reconstruct the Main Drive Aisles and construct related storm sewer improvements in a first-class manner at its sole expense. In addition, Lot 1 Owner shall continuously maintain the Main Drive Aisles in a well-kept appearance of a first-class Retail and Residential Center, and keep the Main Drive Aisles free from rubbish, debris, and to conduct weed abatement, rubbish and debris removal, snow removal and other maintenance to the extent required by applicable federal, state, and/or local laws. Lot 1 Owner's maintenance obligations shall also include re-paving and striping the Main Drive Aisles and maintaining and repairing the storm sewer improvements located in the Main Drive Aisles. In addition, Lot 1 Owner, at its sole expense, shall keep the Main Drive Aisles in a clean, safe and orderly manner and to cause all weeds, rubbish, snow, and debris to be removed from the Main Drive Aisles in accordance with the provisions of this Section 4.2. Costs for construction and maintenance of the Main Drive Aisles will be paid by the Lot Owners based pro rata on the square footage of their respective Lots.

4.3 Maintenance of Common Area. The Manager shall maintain, operate, repair and replace or cause such activity to occur regarding the Common Area ("Maintenance and Repair of the Common Area") (subject to this Section 4.3) in good order in an economical and efficient manner, consistent with good Retail and Residential Center management practices prevailing in the metropolitan area where the Retail and Residential Center is located for Retail and Residential Centers of similar age and character, and in full compliance with all applicable Laws. Notwithstanding anything to the contrary herein, any Owners or Occupants granted a specific and/or exclusive use of a portion of the Common Area by a Majority Vote shall keep such portion in clean and orderly condition free of all refuse. The Manager shall use commercially reasonable efforts to operate and maintain the Common Area in accordance with the final approved Budget. Such maintenance obligations shall be treated as a Common Expense. Maintenance and Repair of the Common Area shall not include any activity that constitutes a capital expenditure unless the Manager receives approval by a Majority Vote.

4.4 Excluded Maintenance Areas. Maintenance and Repair of the Common Area shall not include the maintenance or insurance of Outdoor Occupant Improvements or any Ground Leased Portion (unless and except to the extent provided otherwise in a Lease between the Declarants and a Ground Lessee), and each Owner of a Parcel containing Outdoor Occupant Improvements or constituting a Ground Leased Portion shall be responsible to maintain and insure such facilities in good and clean condition and

repair and in a quality and condition comparable to the quality and condition of the maintenance of the Common Area required by this Article 4.

4.5 Specific Maintenance Items. Maintenance and Repair of the Common Area shall include, by way of illustration and not of limitation, the items listed in this Section below. Any and all costs and expenses which shall be incurred in the operation and maintenance of the Common Area, including the items listed below, shall be a Common Expense (unless and except to the extent provided otherwise in a Lease between a Declarant and any Occupant). Notwithstanding anything to the contrary herein, maintenance of the Common Area by the Manager excludes maintenance of Outdoor Occupant Improvements.

a. Maintaining all paved surfaces of the Common Area (including the public sidewalks along public streets) in a level, smooth evenly covered condition and cleaning, sweeping, restriping, repairing and resurfacing the Common Area as needed with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability.

b. Removing all papers, debris, filth and refuse, ice and snow and thoroughly sweeping the Common Area to the extent reasonably necessary to keep the Common Area in a clean and orderly condition.

c. Installing, placing, maintaining, repairing, and replacing any appropriate directional signs, curb stops, roadway markers, and parking stall lanes or other striping, including the repainting and refurbishment of such devices as required.

d. Operating, repairing, and replacing, where necessary, such artificial lighting facilities as shall be reasonably required.

e. Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines and replacing shrubs and other landscaping as necessary.

f. Maintaining the structural components of all common area use Project Signs.

g. Maintaining and repairing any and all fire loop lines or other fire protection devices, walls and fences, common storm drains, utility lines, sewers, irrigation systems and other utility systems and services which are located on, under or upon the Common Area, which are necessary for the operation and maintenance of the Common Area improvements.

h. Keeping the Common Area free from obstructions not required or permitted hereunder, including, without limitation, obstructions caused by the sale or display of merchandise outside the exterior walls of the Buildings located within the Retail and Residential Center.

i. Employing all necessary personnel, contractors, subcontractors, the Manager and other persons required for operation and maintenance of the Common Area; provided, however, the employment of any personnel to provide security for the Common Area shall require the prior written approval of a Majority Vote.

j. Cleaning, maintaining and repairing all sidewalks, including those situated on the perimeter or outside the boundaries of the Common Area which are customarily maintained by property owners adjoining such sidewalks.

k. Obtaining and maintaining a commercial general liability insurance policy insuring the Manager, the Declarants and the Owners, all as named insureds, against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Common Area with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The insurance limits in this section shall be subject to increase from time to time by such amounts as the Manager and the Declarants may deem are reasonable, as may be evidenced by the practice of similarly situated Retail and Residential Centers.

l. Such other actions as shall be required from time to time to cause the Common Area to be maintained in clean, first class condition.

4.6 Excluded Costs. Common Expenses shall not include the following:

- a. merchant association costs and expenses; and
- b. advertising and promotional costs and expenses incurred by any individual Occupant;
and
- c. garbage collection costs and expenses for individual Occupants of Buildings located in the Retail and Residential Center; and
- d. carrying costs and penalties related to unpaid bills for Common Expenses which had been in possession of the Manager for more than twelve (12) months; and
- e. any costs of constructing, installing, operating, maintaining and repairing Outdoor Occupant Improvements.

4.7 Budget. Within 30 days prior to the commencement of each calendar year, the Manager shall submit to the Declarants and all Owners and Occupants required to pay a Pro Rata Share of Common Expenses, a proposed Budget, for all Common Area maintenance and insurance expenses to be incurred during the following calendar year (the "Maintenance Services"). The Budget shall be approved yearly by a Majority Vote. Decisions regarding parties to provide Maintenance Services to the Retail and Residential Center may include factors other than price, including prior experience with vendor, local reputation of vendor or competing vendors, etc., in the exercise of the commercially reasonable judgment of the Manager provided that the Manager shall undertake to obtain the Maintenance Services at a commercially reasonable price. If the Manager determines that the Common Expenses for a calendar year will vary from the amounts set forth in the Budget, the Manager may, by notice to the Declarants and Owners and Occupants required to pay a Pro Rata Share, revise the Budget for such year and seek approval for such revised Budget by a Majority Vote. If a Majority Vote consents to such revised Budget, then each Owner or Occupant shall pay the accrued difference between the original and the revised Budgets within fifteen (15) days after receipt of a written request to pay along with a copy of the revised Budget. During the initial operating stages of the Retail and Residential Center, which may be prior to the commencement of a full calendar year, the Manager will provide a Budget to those Owners and Occupants obligated to pay Common Expenses for a portion of, but more than, a full calendar year for approval by a Majority Vote.

4.8 Payment of Each Owner's Share of the Budget. Each Owner shall pay, or cause to be paid, the Manager one-twelfth (1/12) of its Pro Rata Share of the Budget to the Manager on or before the tenth (10th) day of each calendar month for the ensuing calendar year. In the event a Lot Owner incurs a fee to be paid to its Owner Representative as compensation for services rendered to the Lot Owner, then such Lot Owner shall be solely responsible for the timely payment of such fee to its Owner Representative. An

Owner's Pro Rata Share of Common Expenses as set forth in the Budget for any fractional calendar month shall be prorated and paid on or before the first day of the first full calendar month following such fractional month.

4.9 Annual Reconciliation. Within ninety (90) days after the end of each calendar year, the Manager shall deliver to the Declarants and each Owner a written itemized statement ("Annual Statement") showing the amount of the actual Common Expenses for the preceding calendar year, the amount paid by such Owner toward Common Expenses during the preceding calendar year, and any amounts due from such Owner to the Manager for such Owner's Pro Rata Share of such Common Expenses and/or any amounts due from the Manager to such Owner (in either case, the "Reconciliation Share"). Any Reconciliation Share due from the Manager to an Owner shall accompany such Annual Statement. Any Reconciliation Share due from an Owner to the Manager shall be paid within thirty (30) days after receipt by such Owner of the Annual Statement. Upon request, the Manager shall provide any Owner copies of all bills, payment applications, invoices for Common Area maintenance performed, receipts for Common Expenses paid, and other reasonable supporting documentation, including the calculation of such Owner's Pro Rata Share with a breakdown of the square footage of the Buildings in the Retail and Residential Center. Unless an Owner raises any objections to an Annual Statement within thirty (30) days after receipt of the same, the Annual Statement shall conclusively be deemed correct and accepted by the Owner. If an Owner does timely object to an Annual Statement, the Manager and the Owner shall negotiate in good faith to resolve any disputes. Any objection of an Owner to an Annual Statement and resolution of any dispute shall not postpone the payment of any undisputed amounts due the Manager by the Owner. Failure of the Manager to deliver the Annual Statement in a timely manner does not relieve an Owner's obligation to pay any amounts due Manager pursuant to an Annual Statement subsequently delivered.

4.10 Books and Records; Audit. The Manager shall maintain the books and records for the Common Expenses (the "Records") for a period of at least two (2) years. Any Owner may examine or audit the Records for the previous two calendar years at any reasonable time at the Manager's place of business or where the Records are maintained and kept. The Owner performing such audit shall bear its own cost of performing such audit, unless the audit discloses a discrepancy in excess of seven percent (7%) of such Owner's Pro Rata Share of the Common Expenses, in which event the Manager shall reimburse such Owner for the reasonable costs of such audit and examination of the Records with such expenses to be calculated at a customary hourly rate for professionals conducting similar audits on an hourly and not a contingent fee basis.

4.11 Change of Manager. Upon any change of the Manager, the successor Manager, who shall be selected by a Majority Vote, shall provide written notice to all Owners and Occupants.

4.12 Management Fee. Common Expenses shall include a management fee to the Manager (the "Management Fee") that is set forth in the Management Agreement.

ARTICLE 5 EASEMENTS

5.1 General.

a. The Property and any portion of the Property which is sold as a separate Lot shall be conveyed and owned subject to and together with the Easements recited in this Declaration, whether or not such Easements are specifically set forth in the document of conveyance. In each instance the physical location of an Easement may, in some circumstances, be located in the same place and the use thereof may be shared with other Easements similarly located and in each such instance the rights and privileges associated with each such Easement shall be interpreted separately, but the use shall be deemed to be non-

exclusive with any other Easement similarly located. Except as may be specifically set forth elsewhere in this Declaration, no Easement may be amended, permitted for off-property usage, extinguished or otherwise modified in any manner by an amendment to this Declaration without the express written approval of the Owner of the Lot, Owner's Occupant which shall be benefitted or intended to be benefitted by the existence of such Easement. It is expressly agreed that any and all Easements granted pursuant to this Declaration shall survive any termination, expiration or other cessation of this Declaration and shall be extinguished only upon the execution and delivery of a separate, written termination executed by the party legally entitled to terminate the Easement intended to be terminated.

b. The primary location of easements herein established for ingress and egress and all Utility Systems shall be as set forth on the Subdivision Plat. Notwithstanding the location of public utility easements, water line easements and other easements shown on the Subdivision Plat, to the extent installation of Utilities is required in a location not shown on the Subdivision Plat, an Owner of the Parcel upon which such easement is required shall permit the Construction of required Utilities; provided that such Construction and location shall not unreasonably impair such Owner's use of the Building or the Outdoor Ground Leased Portion, as applicable, located on its Parcel. All such Utility Systems shall be installed and maintained below the surface or ground level of such easements; provided, however, that such limitation shall not restrict the Construction of ground surface mounted control and access facilities for Utilities. The party installing any Utility System shall use reasonable efforts to cause the installation of such Utility Systems prior to paving of the Common Area or any Outdoor Ground Leased Portion. In the event an Owner deems it necessary to cause the installation of a Utility System across the Common Area or Outdoor Ground Leased Portion of any other Parcel subsequent to the initial paving and improving thereof (the "Requesting Owner"), the Owner of the burdened Parcel thereof agrees not to unreasonably withhold the granting of any necessary additional easements; provided, such Owner may withhold its consent if such installation would unreasonably interfere with the normal operation of any business in the Retail and Residential Center, or with such Owner's plans for the development of its Parcel; and provided further, the Requesting Owner shall, at its sole cost and expense, completely restore to the same or better condition all Improvements located on the Common Area, Outdoor Ground Leased Portions and surfaces disrupted as a result of such installation. The Owner of a burdened Parcel may reasonably request that such installed Utility Systems be relocated subject to compliance with applicable Laws, at the expense of the Requesting Owner, provided that such relocation shall not interfere with, increase the cost or diminish utility services for any of the other Owners or Occupants. In the event it should be necessary to grant any of the foregoing easements and rights to local utility companies as a condition of their providing or continuing service, such rights shall be granted, provided that the Owners required to execute such instruments deem the terms and conditions of such a grant to be reasonably acceptable. In such event, the Owner requiring or causing the requirement of any such easement shall, promptly following the grant of such easement, and at its sole cost and expense, provide to the Owner granting such easement a survey of such Owner's Parcel depicting the location of such easement.

5.2 Cross Access and Cross Parking Easement. There is hereby granted to each Owner, for the benefit of each Owner and Occupant and their guests and invitees, a perpetual, non-exclusive Easement on, over and across the driveways, access drive aisles and parking areas located on each Lot, including, without limitation, the Main Drive Aisles, for the purpose of vehicular parking and vehicular and pedestrian ingress and egress from the public rights of way via all current and future access points to each respective Lot (the "Cross Access and Cross Parking Easement"). Subject to the terms of Section 5, each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of each such grantee Owner, and for the use of the Owners and their respective Occupants and Retail and Residential Center Parties, and for the benefit of the Parcels owned by each such grantee Owner, and as a burden on each grantor Owner's Parcel, a non-exclusive easement appurtenant to each grantee Owner's Parcel for the purpose of providing and permitting pedestrian and vehicular ingress, egress and cross-access to adjacent Lots, Parcels and public rights-of-way, including, without limitation, ingress, egress and cross-access for

commercial delivery vehicles in accordance with truck route and pedestrian and vehicular circulation patterns as approved by the City for the Retail and Residential Center; and for vehicular parking upon, over, across and through the Common Area or Outdoor Ground Leased Portion, as applicable, on each such grantor Owner's Parcel. Such right shall be applicable to those portions of the Common Area or Outdoor Ground Leased Portions that are intended for use by motor vehicles or pedestrians, as applicable, based upon the Improvements that have been constructed and exist upon the Common Area or Outdoor Ground Leased Portions. Except as to the Declarants as herein provided, the foregoing shall not create any rights in any parties other than the Owners and the named beneficiaries of such rights through such Owners. No Owner shall be permitted to obstruct any drive aisle, entry to the Retail and Residential Center or limit or restrict access to and from its Parcel by more vehicles or pedestrians.

5.3 Drainage Easement. There is hereby granted to each Owner, and Owner's Occupant a perpetual, non-exclusive Easement on, over, across, under and through the other Lots, for the purposes of: (i) surface and underground storm drainage of their respective Lot, and (ii) constructing, installing, operating, servicing, repairing, replacing and maintaining any and all storm drainage facilities and related appurtenances, as such storm drainage facilities may be required by any applicable Governmental Authority to drain such Lot (the "Drainage Easement").

5.4 Easement for Other Utilities. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of each such grantee Owner and its Parcel, without the necessity for further documentation, non-exclusive easements appurtenant to the Parcel owned by the grantee Owner, under, through and across the Common Area or Outdoor Ground Leased Portion, as applicable, of the Parcel owned by the grantor Owner, for the installation, use, further extensions, maintenance, repair and replacement of, including, but not limited to, storm drainage systems or structures (inclusive of master detention/retention basin(s)), water mains, storm drains, sanitary sewers, water sprinkler system lines, telecommunication, electrical conduits or systems, cable and fiber optic lines, gas mains and other public utility services, lines, and facilities, including supply and distribution systems ("Utility Systems"), necessary for the orderly development and operation of the Common Area, each Outdoor Ground Leased Portion, and each Building in the Retail and Residential Center as shown on the Subdivision Plat as a "Public Utility Easement"; provided, the rights granted pursuant to such easements shall at all times be exercised in such manner as to cause the least interference with the normal operation of the Retail and Residential Center; and provided further, except in an emergency, the right of any grantee Owner to enter upon the Parcel of any grantor Owner for the exercise of any right pursuant to such easements shall be conditioned upon obtaining the prior written consent of such grantor Owner, which consent shall not unreasonably be withheld or delayed. The location of any stormwater drainage facilities located on or within the Retail and Residential Center shall comply with City Laws and applicable terms and conditions of the Development Agreement.

5.5 Main Drive Aisles Easement. Lot 2 Owner, Lot 3 Owner, Lot 4 Owner, Lot 5 Owner, Lot 6 Owner, and Lot 7 Owner hereby grant to Lot 1 Owner, and its Occupant, a perpetual, non-exclusive Easement: (i) on, over and across those certain portions of their respective Lots located within the Main Drive Aisles for the purpose of snow removal and maintenance of the Main Drive Aisles, and (ii) on, over, across, under and through those certain portions of their respective lots located within the Main Drive Aisles for the purpose of construction and maintenance of storm sewer improvements (collectively, the "Main Drive Aisles Easement").

5.6 Reservation. Each Owner, and Owner's Occupant hereby reserves the right to use any portion of their respective Lot for any use not inconsistent with the other Owners' Easement rights as set forth in this Article 5.

5.7 Fire Access. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of each such grantee Owner and its Parcel(s), and for the benefit of all other Owners and their respective Occupants, and as a burden on the grantor Owner's Parcel, a perpetual, non-exclusive fire access easement appurtenant to each grantee Owner's Parcel on, under and across the Common Area or Outdoor Ground Leased Portion, as applicable, of each grantor Parcel as may be required to provide for the (i) pedestrian and vehicular access and parking of fire-fighting personnel, equipment and vehicles; and (ii) maintenance, operation, removal, replacement and reinstallation of water and fire suppression system lines, including the right of ingress and egress for such purposes, and as may be shown on the Subdivision Plat as a "Fire Access Easement," or similar notation. No Owner shall construct any Improvement upon its Parcel which will impair access over and across any such fire access easement without the express prior written approval of the Declarants, all other Owners and the City.

5.8 Building Encroachments. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee, for the benefit of such grantee Owner and its Parcel, an easement for any portion of any Building or structure on any Parcel (including, without limitation, footings, piers, piles, grade beams, ramps, support columns, canopies, eaves, utility meters, roof overhangs, and subsurface support elements required for the construction or reconstruction of any Building or structure (collectively, "Permitted Projections") which may encroach onto, under or over an adjoining Parcel; provided, that (i) the easement for Permitted Projections and all other building encroachments granted herein shall not exceed two (2) feet, and (ii) the encroachment easement granted herein shall not extend to encroachments which are intentional or which materially and adversely affect the location, orientation, design, Construction or use of Buildings or other Improvements to be constructed on a Parcel upon which the encroachment has taken place, unless first approved in writing by the Owner of the Parcel upon which the encroachment shall exist. The easement granted herein shall last so long as this Declaration is in effect. In the event this Declaration expires, this easement shall last so long as the Building of which such encroachment is a part is standing.

5.9 Emergency Exits. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee and for the benefit of each other Owner and its respective Parcel: (i) an easement for any portion of any stairs and landings (including any footings and foundations related thereto) constructed in connection with Building emergency exits required by any governmental entity, which may encroach onto or over an adjoining Parcel; and (ii) an easement for emergency egress from such emergency Building exits; provided, the easement for stairs and landings (and foundations and footings related thereto) granted herein shall not exceed six (6) feet in width.

5.10 Restoration. If any Owner damages the Common Area or any Outdoor Ground Leased Portion as a result of any Construction or the exercise of its easement rights, such as the placement of utilities within the Common Area or any Outdoor Ground Leased Portion (excluding normal and anticipated use and wear and tear), such Owner, at its sole cost and expense, shall immediately repair such damage and restore the Common Area or Outdoor Ground Leased Portion to the same or better condition that existed before such damage. In the event that the Owner or Occupant shall fail to repair or restore the Common Area, or any Outdoor Ground Leased Portion as required by the preceding sentence, the Manager may deliver to such Owner, written notice of such failure which shall specify the alleged deficiencies. In the event that such deficiencies are not corrected within thirty (30) days of the date of such notice, the Manager shall have the right to cure such deficiencies. The applicable Owner shall be responsible to pay any and all costs and expenses incurred by the Manager to correct such deficiencies, plus a supervision fee to the Manager in the amount equal to ten (10%) of the costs and expenses so incurred by the Manager. Such reimbursement shall be made not later than thirty (30) days after receipt of a statement of such costs, including appropriate supporting documents. Any amounts not so paid shall accrue interest at the rate of fifteen percent (15%) per annum from the date of the statement requesting reimbursement through the date the reimbursement payment is received by the Manager.

5.11 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project to or for the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the Easements, each Owner may be entitled to take whatever steps it deems reasonably necessary to protect and preserve the private ownership of its Lot and to prevent the same from being dedicated to the public use as a matter of law. An Easement granted herein to the County and/or a Governmental Authority shall be deemed granted to the County and/or the applicable Governmental Authority only, which may be used by its employees, agents, contractors and representatives in performance of their respective duties within the Project and shall not be construed to be a grant to the public generally.

ARTICLE 6 SIGNS

6.1 Generally. In addition to any other restrictions set forth in this Declaration, all signs which shall be located on any Building or in any public area of the Retail and Residential Center shall comply with all applicable ordinances of the City. To the extent such ordinances require the formal approval of the City, the Owner or Occupant desiring to display such sign shall be required to obtain such approval.

6.2 Building Signs. Each Owner shall have the right to maintain such Signs on the exterior and interior of Buildings located on its Parcel as it desires. Banners, flags, Signs or advertising objects, displays or lights visible from the exterior of any Building are permitted; provided, however, no auction, liquidation, going out of business, fire or bankruptcy sales may be conducted or advertised by sign or otherwise. If permitted by Law, each Owner shall have the right to erect, maintain and replace Signs on the exterior of the Buildings located on its Parcel in the Retail and Residential Center.

6.3 Pylon/Monument Signs. There will be one or more free standing pylon and/or monument signs (collectively the "Retail and Residential Center Signs") installed within the Retail and Residential Center as approved by the Declarants, subject to the approval of the City. The cost of maintaining the structural components and providing electricity to operate the Retail and Residential Center Signs shall be a Common Expense. Unless and except as provided otherwise in a Lease or other separate written agreement with the Declarants, each Owner or Occupant with a sign panel shall be responsible to pay for any and all costs and expenses which shall be incurred in the fabrication, installation, maintenance, change, and/or replacement of its sign panel(s). Each such Owner, at its sole expense, shall be responsible for the maintenance and replacement of its sign panel(s) as necessary to maintain such sign panel(s) in a first-class condition. Except as expressly permitted herein, such as the Retail and Residential Center Sign, there shall be no Signs in the Common Area or Outdoor Ground Leased Portions of the Retail and Residential Center without the prior written approval by a Majority Vote. Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner allowed to erect or maintain Signs or sign panel(s) pursuant to this section, as grantee, a non-exclusive easement under, through and across the Common Area or Outdoor Ground Leased Portion, as applicable, of the Retail and Residential Center for the purpose of installing and/or maintaining utility lines to service freestanding pylon or monument signs, if any, and all other authorized Signs, if any. Each Owner or Occupant shall utilize Declarants' sign vendor for Retail and Residential Center Signs and any panels located thereon. The pylon/monument signs and panels shall be of a consistent color and consistent with the overall Retail and Residential Center Signage theme.

6.4 Purpose of Signs. Any and all Retail and Residential Center Signs shall solely advertise the Retail and Residential Center and/or the businesses or Occupants located within the Retail and Residential Center.

ARTICLE 7
INDEMNIFICATION AND INSURANCE

7.1 **Indemnification.** Each Owner and the Manager each, acting as an “Indemnifying Party”, hereby indemnifies, holds harmless and agrees to defend each Owner (or other Owner, as the case may be), the Manager, and the Declarants, each as an “Indemnified Party”, from and against all claims, damages, expenses (including, without limitation, reasonable attorney’s fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring in the Retail and Residential Center and/or on the ways immediately adjoining the Retail and Residential Center, caused by the active or passive negligence or willful misconduct of the Indemnifying Party, its agents, servants, employees, and invitees. It is provided, however, that the Indemnifying Party does not and shall not be required to indemnify an Indemnified Party against any injury, loss of life, or damage which is caused by the active or passive negligence or willful misconduct of the Indemnified Party, an Owner (other than the Indemnifying Party if the Indemnifying Party is an Owner), or its or their agents, servants, employees or invitees. The Parties’ obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Declaration, as to claims arising or accruing prior to the expiration or termination of this Declaration. The indemnification obligation herein will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under worker’s compensation acts, disability benefit acts, employee benefit acts, or otherwise. In addition, the indemnification obligation set forth herein is a contractual obligation of the Manager and applicable Owner and will not be diminished by any insurance coverage or any restriction, cap or other provision of governmental immunity law or similar doctrine.

7.2 **Liability Insurance Coverage and Limits.** Each Owner agrees to maintain liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about their Parcel, with a “Combined Single Limit” (covering personal injury liability, bodily injury liability and property damage liability) of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The insurance limits in this section shall be subject to increase from time to time by such amounts as the Declarants may reasonably agree are necessary or desirable, as may be evidenced by the practice of similarly situated Retail and Residential Centers.

7.3 **Contractor’s Insurance.** During the period of any Construction in the Retail and Residential Center by or at the request of any Owner, such Owner agrees to obtain or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

- a. Workers’ compensation - statutory limits; and
- b. Employers Liability Insurance with coverage and minimum limits of the greater of: (i) bodily injury by accident (\$100,000.00 each accident); (ii) bodily injury by disease (\$500,000.00 policy limit); and (c) bodily injury by disease (\$100,000.00 each employee); and
- c. Comprehensive General and Commercial Automobile Liability as follows: (i) “Combined Single Limit” (covering personal injury liability, bodily injury liability, and property damage liability) of not less than One Million Dollars (\$1,000,000.00) for total claims for any one occurrence; (ii) Independent Contractor’s Liability or Owner’s Protective Liability with the same coverage as in (i) above; (iii) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work; (iv) “XCU” hazard coverage, if applicable; (v) “Broad Form” Property Damage Endorsements; (vi) “Personal Injury” Endorsements; and (vii) “Blanket Contractual Liability” Endorsement. If any construction activity involves the use of another Owner’s Parcel, then the Owner of

such Parcel shall be endorsed as an additional insured under all such insurance, and such insurance shall provide that the same shall not be canceled without at least thirty (30) days' prior written notice to the named insureds.

7.4 Waiver of Certain Rights. With respect to any loss or damage that may occur to the Retail and Residential Center (or any improvements thereon) or any Parcel, which is insured under a fire and extended coverage insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, the Owner suffering such loss hereby releases the other Owners from all claims with respect to such loss; and the Owners each agree that their respective insurance companies shall have no right of subrogation against the other Owners on account of any such loss, and each Owner shall procure from its respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners which the insurers might otherwise have under such policies.

7.5 Policy Requirements. Any insurance required to be provided under this Article 7 may be in the form of blanket liability coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required therein. Each Owner shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, but only so long as: (i) the self-insuring Owner shall have a net worth of at least Fifty Million Dollars (\$50,000,000.00); (ii) the self-insuring Owner shall, upon request, provide an audited financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth; and (iii) such self-insurance provides for loss reserves which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any deductible in excess of Ten Thousand Dollars (\$10,000.00) shall be deemed to be self-insurance. Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this section to be delivered to the Manager for the benefit of the other Owners. The insurance policies and certificates required by this section shall require the insurance company to furnish the Manager thirty (30) days' prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage.

7.6 Performance of Indemnity Agreements. All policies of insurance required under this Article 7 shall contain a contractual liability endorsement. Each Owner shall promptly notify the other Owners of any asserted claim with respect to which such Owner is or may be indemnified against hereunder and shall deliver to such other Owners copies of process and pleadings.

ARTICLE 8 **DAMAGE OR DESTRUCTION**

In the event any Building in the Retail and Residential Center is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Parcel upon which such Building is located may, in its sole, subjective discretion, demolish or rebuild the damaged Building. In the event an Owner determines to demolish a damaged Building, that Owner shall either promptly construct a new Building on the same location or leave and maintain the Parcel of land on which the Building was located in a smooth, level condition, free and clear of all refuse and weeds and sealed against dust by paving and otherwise maintained in a condition similar to other first-class Retail and Residential Centers in Salt Lake County, Utah. In the event an Owner determines to rebuild the Building located on its Parcel in the Retail and Residential Center, such Owner shall forthwith proceed with due diligence to remove any debris and to restore such Building to substantially the same condition as immediately prior to such damage or destruction. In the event the Common Area or any Outdoor Ground Leased Portion of the Retail and Residential Center or any portion thereof shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Common Area or Outdoor Ground Leased Portion so damaged

or destroyed shall forthwith proceed with due diligence to restore such Common Area or Outdoor Ground Leased Portion to its condition immediately prior to such damage or destruction in order to permit vehicular parking (in the manner required by this Declaration) and free and safe vehicular and pedestrian access and circulation in the Retail and Residential Center and to and from all adjacent streets. If the Owner of the Common Area or Outdoor Ground Leased Portion that is damaged or destroyed fails to commence the restoration of the damaged or destroyed portion of the Common Area or Outdoor Ground Leased Portion within thirty (30) days of the date of written notice from the Manager requiring such restoration, the Manager and/or the Declarants shall have the right to restore such damaged portion of the Common Area or Outdoor Ground Leased Portion. The applicable Owner shall be responsible to pay any and all costs and expenses incurred by the Manager and/or the Declarants to complete such restoration, plus a supervision fee to the Manager in the amount equal to ten (10%) of the costs and expenses so incurred by the Manager. Such reimbursement shall be made not later than thirty (30) days after receipt of a statement of such costs, including appropriate supporting documents. Any amounts not so paid shall accrue interest at the rate of fifteen percent (15%) per annum from the date funds are disbursed by the Manager through the date the reimbursement payment is received by the Manager.

ARTICLE 9 **EMINENT DOMAIN**

9.1 **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, or transfer in lieu thereof, affecting any other Owner's Parcel, or to give the public or any government any rights in any Parcel. In the event of any exercise of eminent domain, or transfer in lieu thereof, of any part of the Common Area or Outdoor Ground Leased Portion located within the Retail and Residential Center, the award attributable to the land and Improvements of such portion of the Common Area or Outdoor Ground Leased Portion shall be payable to the Owner in fee thereof, and no claim thereto shall be made by the Owners of any other portion of the Common Area.

9.2 **Collateral Claims.** All other Owners or persons having an interest in the Common Area or Outdoor Ground Leased Portion so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

9.3 **Occupant Claims.** Nothing in this section shall prevent an Occupant from making a claim against an Owner pursuant to the provisions of any Lease between an Occupant and such Owner for all or a portion of any such award or payment.

9.4 **Restoration of Common Area or Outdoor Ground Leased Portion.** The Owner of the fee of each portion of any Common Area or Outdoor Ground Leased Portion so condemned shall promptly repair and restore the remaining portion of the Common Area or Outdoor Ground Leased Portion, as applicable, so owned as near as practicable to the condition of the Common Area or Outdoor Ground Leased Portion, as applicable, immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Owner. The plans and specifications for such repair and reconstruction shall be approved by the Manager and the repair and reconstruction shall be overseen by the Manager.

9.5 **Restoration of Improvements.** In the event any Improvements or any portion thereof located in the Retail and Residential Center is condemned, the remaining portion of such Improvements shall be demolished or restored by the Owner of the Parcel on which it is located, and such Owner shall remove all debris resulting therefrom. In the event an Owner elects to rebuild or refurbish any Improvements after such condemnation action, such Owner shall proceed with due diligence to restore such

Improvements to completion. In the event the remaining Improvements are removed, the Owner shall thereafter maintain such affected area on the Parcel in the manner provided for in this Declaration.

ARTICLE 10
TAXES

Each Owner shall pay or cause to be paid directly to the appropriate taxing authority before such taxes become past due, the real property taxes and other special taxes and assessments assessed against the Parcel owned by such Owner, including the portion of the Common Area or Outdoor Ground Leased Portion (if any) owned by such Owner, as well as any rental taxes, if any, applicable to such Parcel on account of Owner's lease or rental thereof. No Owner shall be responsible for the payment of any portion of real property taxes and assessments levied against or otherwise contractually applicable to any other Owner's Parcel. In the event any Owner fails at any time to pay, or cause to be paid, before delinquency its taxes or assessments on any portion of a Parcel of which such Owner has a fee interest, and which may become a lien on any of the Common Area, then the Manager or any other Owner may pay such taxes and/or assessments, together with interest, penalties, and costs, and in any such event the Owner obligated to pay such taxes and/or assessments shall promptly reimburse the Manager or such other Owner for all such taxes and/or assessments, interest, penalties, and other charges and until such reimbursement has been made, the amount thereof shall constitute a lien and charge on the Parcel of the defaulting Owner. Nothing contained herein shall prevent an Owner from paying its taxes under protest or challenging the validity or amount of any assessment, so long as such Owner takes steps to prevent the delinquent taxes from becoming a lien on its Parcel or the occurrence of a tax sale of such Parcel. The Owner initially failing to pay taxes or assessments on its Parcel shall be responsible to pay any and all costs and expenses incurred by the Manager or another Owner to pay such amounts. Such reimbursement shall be made not later than thirty (30) days after receipt of a statement of such costs, including appropriate supporting documents. Any amounts not so paid shall accrue interest at the rate of fifteen percent (15%) per annum from the date funds are disbursed by the Manager or the other Owner through the date the reimbursement payment is received.

ARTICLE 11
ENVIRONMENTAL LIABILITIES

Without regard to the party causing the contamination, each Owner assumes all responsibly and liability for any and all damages, costs and claims including, but not limited to remediation costs, incurred as a result of the release of any Hazardous Material from its Parcel which migrates (or has migrated) or otherwise contaminates (or has contaminated) another Parcel in the Retail and Residential Center, including, but not limited to, leaks, spills or losses or motor fuels related to underground storage tanks, piping, dispensing systems, or other facilities or activities on or about any Parcel. Each Owner shall promptly comply with any and all clean-up requirements of any governmental authority having jurisdiction pertaining thereto and shall indemnify the governmental authority having jurisdiction pertaining thereto, and shall indemnify the other Owners for all costs, expenses and fees incurred by any other Owner (including attorney's fees in defending the same) resulting from any contamination or discharge of Hazardous Materials. Any and all environmental assessment and remediation work shall be performed in accordance with all applicable Laws. Notwithstanding the foregoing, the Owners do not assume responsibility and/or liability for, or indemnify any other Owner for, any such damages, costs or claims resulting from any such release caused by, through or under any other Owner. This Article 11 is not intended to limit or define, and does not limit or define, an Owner's remedies against a third-party which caused, or is responsible for, contamination on discharge of hazardous materials.

ARTICLE 12
DEFAULT

12.1 Right to Cure. Should any Owner (“Defaulting Owner”) fail to timely perform any of its obligations under this Declaration (including any obligations of its Occupants (“CC&R Breach”), and thereafter fails to diligently commence performing such obligation within thirty (30) days after its receipt of a written demand regarding said CC&R Breach from the Manager, Declarant, or Owner (herein, the “Curing Party”), the Curing Party shall, in addition to any other remedy provided at law, in equity, or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the Defaulting Owner, and the Defaulting Owner shall reimburse the curing Party for the cost of performing such obligation within thirty (30) days after receipt of billing therefor and proof of payment thereof; except that a Declarant may not cure such obligation if the Defaulting Owner is the other Declarant. In the event the Defaulting Owner does not reimburse the Curing Party within such ten (10) days, the Curing Party shall have: (i) the right to exercise any and all rights which such Curing Party might have at law or in equity to collect the same; and/or (ii) a lien on the property owned by the Defaulting Owner, to the extent of the amount paid by the Curing Party but not reimbursed by the Defaulting Owner, which amount shall bear interest at a rate equal to the then published “Prime Rate” of Wells Fargo Bank, N.A., plus five percent (5.0%) per annum (or, in the event Wells Fargo Bank no longer publishes a Prime Rate, the Prime Rate, for purposes herein, shall be a rate agreed to by all the Owners) (the Owners acknowledging that such rate may not be the lowest or “best” rate), or the highest legal rate of interest, whichever is less, from the date of billing until paid. Notwithstanding the above, no Owner or Declarant shall be deemed to have a committed a CC&R Breach unless there has been a determination by a Majority Vote that such CC&R Breach has occurred in which event the Curing Party shall have those powers that are set forth in this Article 12 to cure such CC&R Breach.

a. Filing of Lien. Such lien may be filed or recorded by the Curing Party as a claim against the Defaulting Owner, in the form required by law, in the office wherein mortgages and liens are recorded, which lien shall contain at least the following information: (1) The name of the lien claimant; (2) the name of the Defaulting Owner; (3) a description of the work performed on behalf of such Owner and a statement itemizing the cost thereof which remains unpaid by the Defaulting Owner; and (4) a description of the property being liened. The lien so claimed shall attach from the date of recordation in the amount claimed by the Curing Party, and it may be enforced and foreclosed in any manner allowed by law including, but not limited to, suits to foreclose a mechanic’s lien, trust deed or mortgage under applicable law. Any Owner filing such lien shall concurrently notify the Defaulting Owner of such filing and shall within sixty (60) days thereafter send to the defaulting Owner at its notice address a copy of such lien showing such recording. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien.

b. Subordination of Lien. Notwithstanding the above, the lien for any amount due by a Defaulting Owner shall be subordinated to the lien of any bona fide security device, including but not limited to, mortgage, deed of trust and sale and leaseback obtained by an Owner of a Parcel for the purposes of the improvement thereof (or a refinancing thereof); provided, however, that such subordination shall apply only to the amounts due and owing to the Manager or a Curing Party which have become due and payable prior to a sale or transfer of such Parcel pursuant to or in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve the Parcel from the lien for any amounts thereafter becoming due, or from the lien of any subsequent amounts due. To the extent another section of this Declaration shall provide a specific remedy for the failure of a party to perform its obligations hereunder, the notice, cure and remedies provided by this Section 12.1 shall be applicable only after application of the remedy otherwise specifically provided.

c. Notice of Claim of Lien. If there is a Monetary Default, any delinquent amounts, together with interest at the Default Rate, costs and attorneys' fees incurred the Curing Owner in the collection of said delinquent amounts, shall be a lien against the Lot of the defaulting Owner (the "Defaulting Owner") in favor of the Curing Owner. To evidence such a lien, the Curing Owner may prepare and execute a written notice of lien setting forth the delinquent amounts, the name of the Defaulting Owner, a description of the Defaulting Owner's Lot, and any other information required by law, which may be recorded.

d. Foreclosure of Lien. To the fullest extent permitted under applicable law, (i) such lien may be enforced by sale or foreclosure (judicial or non-judicial) of the Defaulting Owner's Lot conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law, and (ii) the Curing Owner shall have the right to appoint and assign a trustee to the extent necessary or convenient for any foreclosure. In any such foreclosure, the Defaulting Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. Notwithstanding any language to the contrary herein, all acts regarding the liens, assessments and foreclosures as described above shall be taken in accordance with applicable law. In all events, the lease of any tenant on the Defaulting Owner's Lot shall not be terminated by the foreclosure.

12.2 Injunctive Relief. In the event of any violation or threatened violation of any provision of this Declaration, each of the Manager and the Declarants shall have the right, in addition to any other remedies herein or by law or equity provided, to enjoin such violation or threatened violation.

12.3 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, 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 Declaration.

12.4 No Limitation of Remedies. The various rights and remedies herein contained and reserved to each Declarant, Owner, and Manager, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

12.5 Waiver. The failure by any Owner to enforce any provision, condition, term, limitation, restriction or prohibition set forth in the Declaration shall not be deemed a waiver of any rights whatsoever.

ARTICLE 13 **NOTICES**

Any notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, (iii) by certified or registered mail, postage prepaid, return receipt requested, or (iv) via email, facsimile or other electronic transmission, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

West Valley – JMYL, LP
Attn: Ed "Roy" Corn, Jr.
1049 Via Conca Doro Rd
Vista, California 92084

BWF Safe SV Property Owner, LLC
Attn: Rich Day
4267 Summermeadow Dr.
Bountiful, Utah 84010

With a copy to:
Jeffrey N. Walker
WALKER LAW GROUP PLLC
9533 South 700 East, Suite 200
Sandy, Utah 84070

HZ Props Re, Ltd.
Attn: Amin Dhanani
4415 Highway 6
Sugar Land, Texas 77478-4476

JHP, LLC
Attn.: James H. Pugmire
741 E. Point Hills Cove
Draper, Utah 84020

Notices shall be deemed effective upon receipt, upon attempted delivery if delivery is refused by the intended recipient or if the delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery or upon electronic confirmation that the notice has been delivered.

ARTICLE 14
ATTORNEYS' FEES

In the event any Owner or a Declarant brings or commences legal proceedings to enforce any of the terms of this Declaration, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party, to be fixed by the court in the same action. The phrase "legal proceedings" shall include appeals from a lower court judgment, as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The phrase "prevailing party" as used in the context of Federal Bankruptcy Court shall mean the prevailing party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt party which are reasonably necessary to protect its rights under the terms of this Declaration. The phrase "prevailing party" as used in the context of any court other than the Federal Bankruptcy Court shall mean the party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which the party sought.

ARTICLE 15
DURATION

Except as otherwise provided herein, the covenants and restrictions of this Declaration shall run with and bind the Property and Project for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by the affirmative vote of all Owners. No such termination shall terminate any Easement granted herein and all such Easements shall survive any termination of this Declaration and may be extinguished only in the manner provided by law for the termination of an Easement. The Declarants shall deliver notice of any such termination to each Owner and Occupant within

seven (7) days of the termination. Upon written request, all Owners and Occupants shall sign and acknowledge such notice.

ARTICLE 16
MODIFICATION AND ASSIGNMENT

16.1 Modification. This Declaration (including, without limitation, the Site Plan) may only be amended by a Majority Vote. Notwithstanding anything to the contrary in this Section, no modification to this Declaration shall be inconsistent with the approved Site Plan or the Development Agreement without the prior written approval of the City, and any such modification may require amendment to the Site Plan and/or the Development Agreement and shall comply with all applicable City Laws. The Declarants reserve the right to enlarge and add additional land to the Retail and Residential Center, whereupon such additional land shall be subject to this Declaration. The Retail and Residential Center shall not be enlarged or added to nor integrated with any other lands or premises without the prior written consent of the Declarants.

16.2 Assignment of Declarants' Rights and Remedies. Any and all of the rights, powers and reservations of the Declarants herein contained may be assigned by the Declarants to any person, corporation, association or other entity which assumes such assigned duties of the Declarants hereunder. In the event that the Declarants attempts to assign less than all of the rights, powers and reservations of the Declarants set forth herein, then any such assignment must specify which rights, powers and reservations are being assigned and the only party that shall be permitted to exercise a right reserved or granted unto the Declarants shall be the party to whom such right has been assigned. To be effective, such assignment must be in writing, must be recorded in the office of the County Recorder, and must specifically refer to the rights, powers and reservations of the Declarants hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity (such acceptance may be shown, among other ways, by execution of such assignment by such assignee, or by such assignee recording the assignment in the office of the County Recorder) and recording of such assignment in the office of the County Recorder, said assignee shall, to the extent of such assignment, assume, and be deemed to have assumed, the Declarants' duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarants herein. Upon such assignment and recording, and to the extent thereof, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property by the Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to a Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed the Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by a Declarant herein.

ARTICLE 17
GENERAL PROVISIONS

17.1 Accuracy of Recitals. The Declarants hereby acknowledges the accuracy of the recitals of facts and circumstances following the introductory paragraph of this Declaration, which are incorporated herein by this reference.

17.2 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Retail and Residential Center to the general public or for any public purposes whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed. The Manager may take such actions as it deems necessary to prevent any public dedication of any part of the Retail and Residential Center by operation of law.

17.3 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Declaration 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 Declaration shall be valid and shall be enforced to the extent permitted by law.

17.4 Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

17.5 Captions. The captions in this Declaration are for convenience only and do not constitute a part of the provisions hereof.

17.6 No Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted to create a joint venture, a partnership, or any other similar relationship between the Declarants and/or Owners.

17.7 Governing Law. This Declaration shall be construed and enforced in accordance with, and governed by, the law of the State of Utah.

17.8 No Presumption. This Declaration shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against the Declarants.

17.9 Violation of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any Property or Improvements within the Project, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

17.10 No Third-Party Beneficiary. This Declaration has been executed and recorded for the benefit of the Declarants and the Owners. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefitted by a specific provision of this Declaration, no other party shall be construed to be an intended third-party beneficiary of any of the rights, duties or obligations set forth herein and no party other than a Declarant or an Owner shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

17.11 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

17.12 Captions. The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

17.13 Invalidity of Provision. If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

17.14 Exhibits. All exhibits to this Declaration are incorporated herein by this reference.

17.15 Estoppel Certificate. Each Owner agrees that, upon request by any other Owner (the "Requesting Owner"), it will issue to a prospective lender of the Requesting Owner or to a prospective purchaser of the Requesting Owner's interest, an estoppel certificate stating:

a. whether the Owner to whom the request has been directed knows of many defaults by the Requesting Owner under this Declaration, and, if there are known defaults, specifying the nature thereof; and

b. whether this Declaration has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and

c. that to the Owner's knowledge this Declaration as of that date is in full force and effect.

d. Such statement shall act as a waiver of any claim by the Owner 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; provided, no Owner shall incur any liability whatsoever for any misstatement or wrong information unless the same is the result of the gross negligence or willful act of the Owner furnishing such information.

17.16 No Merger. The Easements, covenants and restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any of the Lots may be owned by the same persons from time to time. It is the express intent of the Declarants to create a common scheme for the development and operation of the Project which will not be terminated by the doctrine of merger or otherwise unless this Declaration is terminated in accordance with the provisions hereof.

17.17 Contractual Obligations. All of the terms and conditions contained herein represent contractual obligations of the Owners. The purchase of a portion or all of any Parcel by any governmental entity shall be deemed a proprietary act with full authority granted therefor from any and all legislative body. The presentment of any claim or action against any Owner pursuant to this Declaration (such as through the indemnification provision) shall be presentment and tender of a contractual obligation. Under no condition shall any Owner be limited or restricted (including any waiver due to the passage of time except for the statute of limitation period set forth in Laws of the State of Utah) in its ability to tender any claim or matter to an Owner in accordance with the terms of this Declaration.

17.18 Force Majeure. Each Owner will comply with the time periods set forth in this Declaration to the extent such provisions are applicable to it; provided each and every period shall be extended for a period or periods of time equal to any period or periods of delay preventing the performance of any Owner's obligations, which delays are caused by fire or other casualty, acts of god, acts of nature, weather, refusal or failure of governmental authorities to grant necessary approvals or permits (the Owner responsible thereof agreeing to use reasonable diligence to procure the same), war, riot, or insurrections, or any other cause (except financial) beyond the reasonable control of such Owner. In the event of any such delay, the Owner suffering such delay shall seek and use to the extent available economically reasonable and comparable substitutes or alternatives and shall promptly give written notice to the other Owners of the occurrence of such delay and, upon termination thereof, notice of the termination of such delay. In the event an Owner suffers such a delay and fails to give notice of the occurrence of and termination of such delay, as provided herein, such Owner shall be deemed to have waived its right to an extension hereunder on account of such delay.

17.19 Consent and Approvals. Wherever the consent, approval, judgment or determination of a Declarant or Owner is required or permitted under this Declaration and no express standard is specified

(e.g., “reasonableness”), the party required to act shall exercise its business judgment in good faith in granting or withholding such consent or approval or in making such judgment or determination. If it is determined that such party failed to give its consent where it was required to do so under this Declaration, an Owner affected by such denial of consent shall be entitled to injunctive or declaratory relief but shall not be entitled to monetary damages or to terminate this Declaration for such failure. The review and/or approval by a Declarant of any item or matter to be reviewed or approved by such Declarant under the terms of this Declaration shall not impose upon such Declarant any liability for the accuracy or sufficiency of any such item or matter or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting the Declarants’ and other Owners’ interests in the Retail and Residential Center, and no third parties shall have any rights as a consequence thereof.

17.20 Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Owners and their successors and assigns. To the extent a vote or consent of Owners is required under this Declaration, each Owner shall have a vote equal to its Pro Rata Share regarding the exercise of any rights of a Declarant.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, this Declaration has been executed by the Declarants as of the Effective Date.

WEST VALLEY – JMYL, LP, a California limited partnership, by its General Partner, West Valley Management Corporation

By: 
Name: Edward Corn, Jr. for West Valley Management Corporation
Its: General Partner

BWF STAY SV PROPERTY OWNER, LLC, a Utah limited liability company

By: _____
Name: Rich Day
Its: Manager

HZ PROPS RE, LTD., a Texas limited liability company

By: _____
Name:
Its: Manager

JHP, LLC, a Utah limited liability company

By: _____
Name:
Its: Manager

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

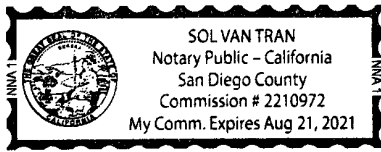
On 13th day of May 2021 before me, Sol Van Tran, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Edward Lee Monroe Corn Jr.
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal



Place Notary Seal and/or Stamp Above

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: CC & A Sage Valley

Document Date: 5/13/21 Number of Pages: —

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: N/A Signer's Name: _____

Corporate Officer - Title(s): _____ Corporate Officer - Title(s): _____

Partner - Limited General Partner - Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

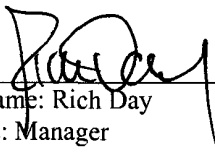
Signer is Representing: _____ Signer is Representing: _____

IN WITNESS WHEREOF, this Declaration has been executed by the Declarants as of the Effective Date.

WEST VALLEY – JMYL, LP, a California limited partnership, by its General Partner, West Valley Management Corporation

By: _____
Name: Edward Corn, Jr. for West Valley Management Corporation
Its: General Partner

BWF STAY SV PROPERTY OWNER, LLC, a Utah limited liability company

By:  _____
Name: Rich Day
Its: Manager

HZ PROPS RE, LTD., a Texas limited liability company

By: _____
Name:
Its: Manager

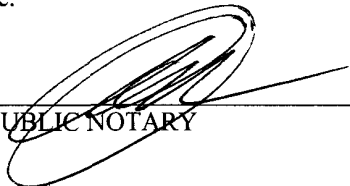
JHP, LLC, a Utah limited liability company

By: _____
Name:
Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by Rich Day, the manager of BWF Stay SV Property Owner, LLC, a Utah limited liability company, and acknowledged to me that said limited liability company executed the same.





PUBLIC NOTARY

STATE OF CALIFORNIA)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by Ming Yang Lee, the general partner of West Valley Management Corporation, the general partner of West Valley – JMYL, LP, a California limited partnership, and acknowledged to me that said limited partnership executed the same.

PUBLIC NOTARY

STATE OF TEXAS)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by _____, the manager of HZ Props Re, Ltd., a Texas limited liability company, and acknowledged to me that said limited liability company executed the same.

PUBLIC NOTARY

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by _____, the manager of JHP, LLC, a Utah limited liability company and acknowledged to me that said limited liability company executed the same.

PUBLIC NOTARY

IN WITNESS WHEREOF, this Declaration has been executed by the Declarants as of the Effective Date.


WEST VALLEY – JMYL, LP, a California limited partnership, by its General Partner, West Valley Management Corporation

By: _____
Name: Edward Corn, Jr. for West Valley Management Corporation
Its: General Partner

BWF STAY SV PROPERTY OWNER, LLC, a Utah limited liability company

By: _____
Name: Rich Day
Its: Manager

HZ PROPS RE, LTD., a Texas limited liability company

By:  _____
Name: Amin Dhanani
Its: Manager

JHP, LLC, a Utah limited liability company

By: _____
Name:
Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by Rich Day, the manager of BWF Stay SV Property Owner, LLC, a Utah limited liability company, and acknowledged to me that said limited liability company executed the same.

PUBLIC NOTARY

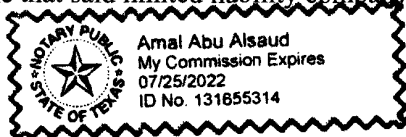
STATE OF CALIFORNIA)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by Ming Yang Lee, the general partner of West Valley Management Corporation, the general partner of West Valley – JMYL, LP, a California limited partnership, and acknowledged to me that said limited partnership executed the same.

PUBLIC NOTARY

STATE OF TEXAS)
 : ss.
COUNTY OF San Antonio)

The foregoing instrument was acknowledged before me this 15th day of May 2021, by Amin Khanani, the manager of HZ Props Re, Ltd., a Texas limited liability company, and acknowledged to me that said limited liability company executed the same.



[Signature]
PUBLIC NOTARY

STATE OF UTAH)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by _____, the manager of JHP, LLC, a Utah limited liability company and acknowledged to me that said limited liability company executed the same.

PUBLIC NOTARY

IN WITNESS WHEREOF, this Declaration has been executed by the Declarants as of the Effective Date.

WEST VALLEY – JMYL, LP, a California limited partnership, by its General Partner, West Valley Management Corporation

By: _____
Name: Edward Corn, Jr. for West Valley Management Corporation
Its: General Partner


BWF STAY SV PROPERTY OWNER, LLC, a Utah limited liability company

By: _____
Name: Rich Day
Its: Manager

HZ PROPS RE, LTD., a Texas limited liability company

By: _____
Name:
Its: Manager

JHP, LLC, a Utah limited liability company

By:  _____
Name:
Its: Manager
BRIAN PUGMIRE

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by Rich Day, the manager of BWF Stay SV Property Owner, LLC, a Utah limited liability company, and acknowledged to me that said limited liability company executed the same.

PUBLIC NOTARY

STATE OF CALIFORNIA)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by Ming Yang Lee, the general partner of West Valley Management Corporation, the general partner of West Valley – JMYL, LP, a California limited partnership, and acknowledged to me that said limited partnership executed the same.

PUBLIC NOTARY

STATE OF TEXAS)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May 2021, by _____, the manager of HZ Props Re, Ltd., a Texas limited liability company, and acknowledged to me that said limited liability company executed the same.

PUBLIC NOTARY

STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 17th day of May 2021, by Brian Pugmire, the manager of JHP, LLC, a Utah limited liability company and acknowledged to me that said limited liability company executed the same.



[Signature]
PUBLIC NOTARY

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land situated in the Southwest quarter of Section 34, Township 1 South, Range 1 West, Salt Lake Base and Meridian, located in West Valley City, County of Salt Lake, State of Utah, said parcel being all of that certain tract of property described in Warranty Deed recorded in Book 7567 at Page 486 as Entry No. 6538369 and being more particularly described as follows:

Beginning at a point on the West line of Redwood Road, said point of beginning being witnessed by a copper rivet set in the curb line 10.3 feet East of the point of beginning, said point of beginning being North 00°01'20" West, along the section line a distance of 260.00 feet and North 89°53'39" West, a distance of 53.00 feet from the South quarter corner of said Section 34 and running thence North 89°53'39" West, a distance of 314.00 feet, to a nail and washer stamped "McNeil Engr."; thence South 00°01'20" East, a distance of 207.00 feet to a rebar without cap 0.2' below surface at the North line of 4100 South Street; thence North 89°53'39" West, along said North line, a distance of 432.98 feet, to a copper rivet set in the drive approach said point being at a point of curvature; thence Westerly along the arc of a 1152.19 foot radius curve to the right, through a central angle of 05°57'12", a distance of 119.72 feet, the long chord of which bears North 86°55'03" West, a distance of 119.66 feet to a point of reverse curvature; thence Westerly along the arc of a 1258.19 foot radius curve to the left, through a central angle of 01°46'14", a distance of 38.88 feet, the long chord of which bears North 84°49'34" West a distance of 38.88 feet, to the West bank of the branch of the North Jordan Canal and a copper rivet set in the top of a wing wall; thence Northwesterly along said West bank per the Snideman and Associate Record of Survey No. S00-10-0629 on file with the Salt Lake County Surveyor's office the following five (5) courses and distances: (1) North 20°19'24" West, a distance of 69.34 feet; (2) North 31°22'27" West, a distance of 90.41 feet; (3) North 40°22'48" West, a distance of 89.83 feet; (4) North 38°52'00" West, a distance of 121.94 feet; (5) North 39°19'14" West, a distance of 90.39 feet, to a rebar and cap stamped Snideman and the East line of Briarwood Plat "D" Subdivision recorded in Book 78P at Page 151 of Plats, on file with the Salt Lake County Recorder's office; thence North 00°06'37" West, along said East line, a distance of 226.06 feet, to the East-West 1/16th line of the Southeast quarter; thence South 89°57'14" East, along said 1/16th line, a distance of 1168.54 feet, to a rebar and cap stamped Great Basin set per Record of Survey No. S00-01-0074 and the West line of aforesaid Redwood Road; thence South 00°01'20" East, along said West line, a distance of 404.96 feet to the point of beginning.

Contains 591,023 sq. ft. or 13.568 acres.

Tax Parcel Nos. 15-34-377-026, 15-34-377-027, 15-34-377-028, 15-34-377-029, 15-34-377-30, 15-34-377-031, and 15-34-377-033.

EXHIBIT B

SITE PLAN FOR RETAIL AND RESIDENTIAL CENTER AND DEPICTION OF THE LOTS

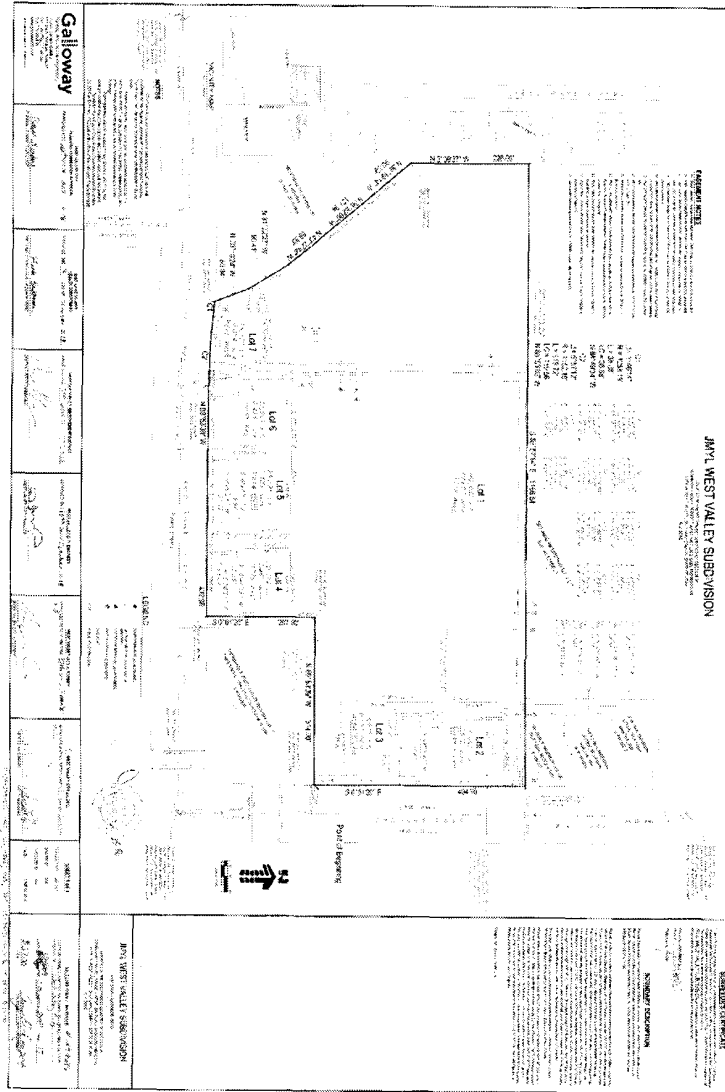


EXHIBIT C

SHARED PARKING

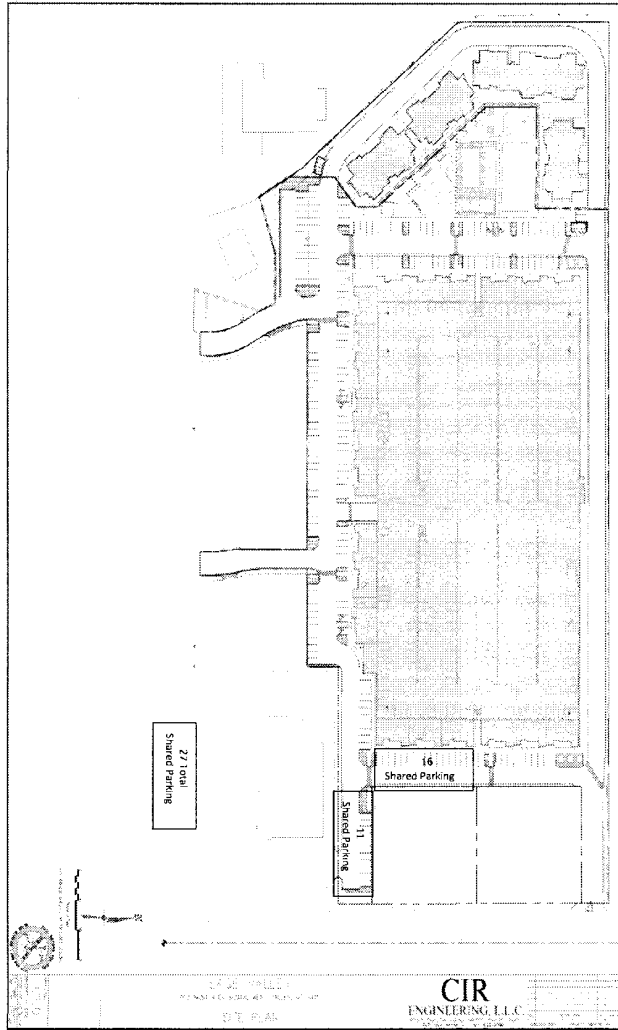


EXHIBIT D

DEPICTION OF THE MAIN DRIVE AISLES

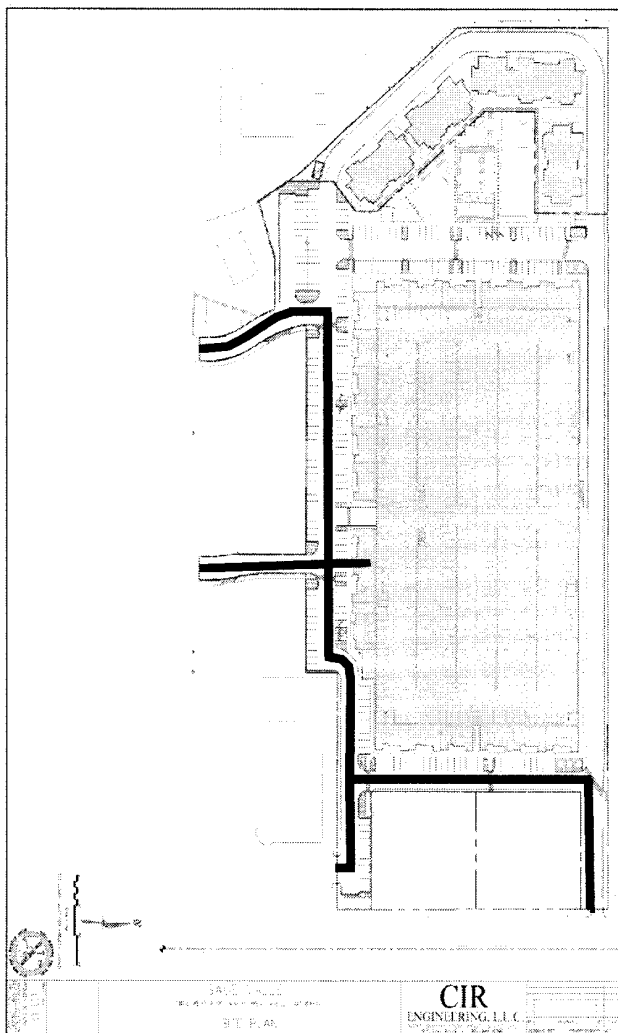


Exhibit D

EXHIBIT E

EXCLUSIVE USE RESTRICTIONS

1. Chicken Restaurant Operation Exclusive. So long as Lot 2 Owner or its Occupant is using Lot 2 for a chicken fast food operation, no other Owner shall be permitted to use or allow any Occupant to use primarily any portion of the Property for the operation of a freestanding restaurant with or without a drive-thru selling primarily boneless and bone-in chicken. As used in this Section 1, "primarily" shall mean a restaurant that derives twenty-five percent (25%) or more of its food sales from the sale of boneless or bone-in chicken.

2. Coffee Operation Exclusive. So long as Lot 3 Owner or its Occupant is using Lot 3 for a coffee business, no other Owner shall be permitted to use or allow any Occupant or allow any other person or entity (except Tenant) to use any portion of the Property or the Restricted Property for the sale of (a) whole or ground coffee beans; (b) espresso, espresso-based drinks, or coffee-based drinks; (c) tea or tea-based drinks; (d) brewed coffee; or (e) blended beverages ("Tenant's Exclusive Items"). Notwithstanding the foregoing, other tenants or occupants may sell Tenant's Exclusive Items so long as revenues from the sales of Tenant's Exclusive Items do not exceed ten percent (10%) of such tenant or occupant's gross annual sales.