

**After recording, return to:**  
HCA Investments LLC  
4287 S. Harrison Blvd  
Ogden, Utah 84403

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
CANYON VIEW COMMERCIAL SUBDIVISION  
(INCLUDES ALL OF LOTS 1 THROUGH 7)**

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Canyon View Commercial is executed by HCA Investments, LLC, a Utah limited liability company, located at 4287 S. Harrison Blvd., Ogden, Utah 84403.

**RECITALS**

- A. HCA Investments, LLC ("Declarant") is the owner and developer of that certain Property to be developed as Canyon View Commercial Subdivision, located in Mountain Green, Morgan County, Utah and more particularly described in Exhibit "A." The Property is currently comprised of Parcel Numbers 00-0056-1587, 00-0004-8825, and 00-0056-1330.
- B. The Property is or will be developed as a commercial subdivision comprised of detached commercial buildings or industrial / retail condominium. The Project includes common areas, private roadways, and a community association (as defined in the Utah Community Association Act, Utah Code § 57-8a-101 *et seq.*)
- C. The Declarant establishes this Declaration, effective as of the date this instrument is recorded with the Office of Recorder for Morgan County, Utah, to provide a general plan for development of the Project and to enhance and protect the value and attractiveness of the Property, in accordance with the Terms and Conditions herein.
- D. The Terms and Conditions established herein are for the mutual benefit and burden of the Declarant, Owners, Occupants, Lenders and all others acquiring any interest in the Project and/or the Property.
- E. The Terms and Conditions set forth herein constitute equitable servitudes which shall run with the land and shall govern the development and use of the Property and shall be binding upon and inure to the benefit of the Declarant, any and all future Owners of any portion of the Property, their heirs, successors, and assigns, and any other Person that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Property. By taking title to a Lot or Unit, an Owner joins in and accepts the intent, purpose, and objectives of this Declaration and agrees to be bound by it and acknowledges the benefits received from its existence and the Declarant's development of the Project and accepts the burdens that accompany these benefits.
- F. Capitalized terms in this Declaration are defined in Article 1 herein or in other sections of this Declaration.

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, this Declaration is adopted by the Declarant, pursuant to the rights and authority described above.

## **ARTICLE 1** **DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 "Builder" shall mean and refer to contracted builder and its assigns.
- 1.2 "County" shall mean and refer to Morgan county
- 1.3 "Community-Wide Standards" shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or, at a minimum, the standards initially established by the Declarant and/or described in this Declaration. The Community-Wide Standards may or may not be set forth in writing.
- 1.4 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Canyon View Commercial Subdivision.
- 1.5 "Governing Documents" shall mean and refer to this Declaration, the Plat, and any other recorded instrument by which the Declarant may exercise power with regard to the development of the Project or otherwise affect the Project.
- 1.6 "Structure" shall mean and refer to a dwelling constructed on a Lot intended for commercial occupancy and is included within the definition of Unit below.
- 1.7 "Lender" shall mean and refer to a holder of a mortgage or deed of trust on a Lot and/or Unit.
- 1.8 "Lot" shall mean and refer to any of the individual building lots created on the Plat on which a commercial dwelling is or will be constructed and is included within the definition of Unit in Section 1.17 below. More than one Lot is referred to herein as "Lots."
- 1.9 "Occupant" shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, a Lot and/or Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.10 "Owner" shall mean and refer to the Person or Persons who are vested with record title to a Lot and/or Unit, and whose interest in the Lot and/or Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Morgan County, Utah. "Owners" shall mean and refer to more than one Owner. The term "Owner" shall not include a mortgagee or a trustee for or beneficiary of a deed of trust. The term "Owner" also shall not include the Declarant.
- 1.11 "Person" shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity.
- 1.12 "Plat" shall mean and refer to the record of survey map for the Canyon View Commercial Subdivision recorded with the Office of Recorder for Morgan County, Utah and all valid recorded amendments and supplements thereto.

- 1.13 "Project" shall mean and refer to Canyon View Commercial Subdivision and all structures and improvements thereon including the Lots, Units and Subdivision Improvements. The Project shall include any additional land made subject to the Declaration at such time the Supplement to Declaration and plat map for the additional land is recorded.
- 1.14 "Property" shall mean and refer to the real property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.15 "Subdivision Improvements" shall mean and refer to all subdivision improvements to be installed outside of the boundaries of Lots or within easements as identified on the Plat that are necessary to provide public road access and utility service to the Lots and Units, and including other construction work required to comply with any conditions of the City or other governmental agencies to the approval of the Subdivision or any Plat thereof.
- 1.16 "Terms and Conditions" shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.17 "Unit" shall mean and refer to a subdivided Lot within the Subdivision depicted as a separately identified parcel on the Plat, which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as a commercial structure. The term "Unit" includes any structures or other improvements on the Unit. The term "Unit" does not include any property or improvements dedicated to the County or the public.

## ARTICLE 2 THE PROJECT

- 2.1 Binding Effect of Governing Documents. The Declarant hereby declares that the Property is part of the Project and that the Project and all of the Lots shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, and each Owner, including his/her/their heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Lot and/or Unit, such Owner and/or Occupant consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 Nature of the Project. The Project is commercial development comprised of seven (7) Lots. The Project is not a cooperative or a community association and is not a condominium. However, Lots may be further subdivided into Units, if approved by Morgan County.
- 2.3 Project Name. The Project is named "Canyon View Commercial Subdivision."
- 2.4 Expansion of Project. The Project may be expanded or contracted by the Declarant. Additional land, whether or not directly adjacent to the Project, may be developed and made part of the Project and made subject to this Declaration by recording of a Supplement to Declaration or similar instrument, together with a plat map for the subject property.

## ARTICLE 3

### DESCRIPTION OF THE LOTS

3.1 The Lots.

- (a) Subject to further specification herein and/or on the Plat, each Lot generally consists of all structures and other improvements thereon. The Project consists of 7 Lots, numbered 1 through 7, as depicted on the plat.
- (b) If a Lot is divided into multiple Units with a condominium plat, all pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit, shall be part of the Unit. Additionally, any mechanical equipment, systems, or other improvement located outside of the boundaries of the Unit, but designated and designed to serve only that Unit, shall be considered part of the Unit.

3.2 Unit Number. If a Lot is subdivided into multiple Units, as described in 3.1 (b) above, the distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.

3.3 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project.

## ARTICLE 4

### EASEMENTS

4.1 Utility Easements. Utility Easements and rights-of-way over, under, across and through the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, broadband, fiber optics, culinary water lines, irrigation lines, gas lines, sewer lines, storm drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Declarant to be helpful in serving the Project, Lots, Units, or Unit Owners in the Project are hereby reserved to the Declarant, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the ownership rights and/or quiet enjoyment of the Lots/Units by the Owners or Occupants. The Declarant shall have the power to grant and convey, for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Project, including the Lots/Units, for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Lot or Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Declarant as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or

convenient to effect the same at the request of the Declarant; provided, however, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Lot/Unit.

4.2 **Construction Easement.** A temporary construction easement is hereby reserved to the Declarant and the Builder and their respective assigns, over, under, across, and through the Project for all purposes reasonably necessary for the construction of Subdivision Improvements and initial construction and landscaping of the Lots. Owners and Occupants, by accepting any instrument creating an interest in a Lot or in the Property, acknowledge that there will be construction activities, traffic, noise, odors, vibrations, and other activities which temporarily may disrupt an Owner or Occupants' quiet enjoyment of a Lot until construction of the entire Project is completed and waive any right to object to such construction; provided, however, that Declarant and the Builder shall use commercially reasonable efforts to minimize the adverse impact of construction on the Owners and Occupants.

4.3 **Easements for Encroachments.** If any portion of any Subdivision Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Declarant, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.4 **No View Easement.** There are no view easements or view rights appurtenant to the Project or to any Lot/Unit. Views from a Lot/Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project.

## ARTICLE 5 MINIMUM STANDARDS AND REQUIREMENTS

5.1 **Minimum Requirements.** No structure shall be constructed or altered or landscaped without the Declarant or ARC's (architectural review committee) prior written approval, as the case may be. Each structure must meet the following minimum requirements for the Project:

- (a) The structure shall not exceed (3) stories.
- (b) Structure shall not exceed thirty-five (35) feet in height from grade.
- (d) Basements are not permitted within the Project.
- (f) Exterior materials for a Structure shall consist of masonry or hardi board. Except for soffit and fascia, aluminum and vinyl siding are prohibited within the Project. Stucco is only allowed as an accent material (see Morgan County Code 8-5C-7III)

5.2 **Declarant-appointed ARC.** To protect the integrity of the Declarant's design scheme for the Project, the Declarant may appoint an Architectural Review Committee ("ARC") to review construction and landscaping and subsequent remodeling, expansion, or other modification or alteration of Structureexteriors.

5.3 Preliminary Plans. The Declarant or the ARC may require, as a minimum, the following:

- (a) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
- (b) Floor plans of each floor level to scale.
- (c) Elevations to scale of all sides of the structure.
- (d) One major section through structure.
- (e) A perspective.
- (f) Specifications of all outside materials to be used on the exterior of the structure.

5.4 Final Plans and Specifications and Working Drawings. The Declarant or the ARC may also require, as a minimum, the following:

- (a) Plot plans to scale showing the entire site, the structure, garages, walks, parking area, fence, carriage lights, and retaining walls with elevations of the existing and finished grade and contours including those at the outside corners of the structures and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.
- (b) Detailed floor plans.
- (c) Detailed elevations, indicating all materials and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Specifications of all front, side, and rear yard landscaping materials.

5.5 Allowed plans. Notwithstanding anything to the contrary in Sections 5.1 through 5.4 above, initial construction of a structure by the Builder from plans that can comply with County set-back requirements on a Lot and height restrictions with exterior materials selected shall not require prior written approval from the Declarant or ARC; provided, however, that any and all deviation, including, without limitation, design, square footage, or construction materials, shall require approval by the Declarant or ARC. Approval by the Builder's sales personnel, design staff, or construction personnel is insufficient for purposes of this Section 5.5.

5.6 Landscaping Requirements. Unless otherwise provided by written agreement between the Declarant or Builder and Owner, the Owner shall be responsible to landscape the Lot and parking, and any adjacent parkstrip, pursuant to a Declarant approved Lot-landscape plan. Landscaping shall include, by way of illustration but not limitation, lawn and /or rock garden and/or other appropriate ground cover, planting beds, bushes, shrubs, trees and an irrigation system, consistent with City ordinance. Any grading or alteration to existing drainage channels must be approved by Declarant. Landscaping of front, side and rear of structure shall be installed within nine (9) months of completion of the Lot improvements or Unit. Each Owner shall be responsible for installation of street trees and landscaping in parking areas consistent with the Planting Plan. Refer to Exhibit B for location and species of tree. The community association shall be responsible for landscaping and maintenance of the detention basins.

5.7 **Maintenance.** Each Owner shall be responsible to maintain his/her/their Lot and/or Unit's exterior, including landscaping and other improvements to the Owner's Lot in neat and tidy condition consistent with the Community-Wide Standards. Lawn, trees, shrubs, rock gardens and other plantings on a Lot shall be properly nurtured and maintained, at the Owner's sole expense. Diseased, dying, or dead trees, shrubs, or other plantings shall promptly be replaced by the Owner, at the Owner's sole expense. Landscapes must be kept reasonably free of weeds. Each Owner shall be responsible for the maintenance and upkeep of any landscaped parking area or park strip area adjacent to the Owner's Lot, if any. Each Owner shall be responsible for snow removal for his/her/their Lot and/or Unit.

5.9 **Slope and Drainage Control.** No grading, construction, or landscaping, and no structure, plants, or other material shall be permitted or allowed to remain which may damage, interfere, or alter drainage channels or obstruct or retard the flow of water through such drainage channels or create erosion or sliding problems, or interfere with any utility easement or right of way. Each Owner shall be responsible to landscape and maintain his/her/their Lot in a manner consistent with existing land drain system and drainage pattern existing on the Lot at the time of the initial sale so as not to interfere with or impair the land drain system in the Project or the existing drainage pattern on any other Lot.

5.10 **Fencing.** The front plane of structures shall not have fencing. Rear and/or side structure fencing shall not exceed six (6) feet and shall comport with applicable County set back and all other applicable ordinance. Certain Lots may be required to install side structure fencing. Fencing locations and materials must be preapproved by Declarant. Fencing must be set back from the front plane of the structure at least two feet (2').

(a) **Allowed Fencing/Wall Materials:** Fences and walls permitted by this Section 5.10 shall be made of high quality durable materials requiring minimal maintenance.

(b) **Prohibited Fence/Wall Materials.** The following materials are prohibited: (i) plastic material (other than vinyl); (ii) materials not typically used or manufactured for fencing such as metal roofing panels, corrugated or sheet metal, tarps, or plywood; (iii) solid or private composite materials or similar hollow-wall panels or product; and (iv) chain link, except as may be installed by Declarant.

5.11 **Variance.** Notwithstanding anything to the contrary in this Article 5, the County may authorize variances from compliance with the minimum standards and requirements when topography, natural obstructions, environmental considerations, esthetics, or hardship require. For purposes of this Section 5.11, neither an inability to obtain County or other governmental approval or a building permit nor financing restrictions or limitations shall be considered as a hardship meriting a variance.

5.12 **Enforcement of Architectural Requirements and Standards.** Any construction, alteration, landscaping, or other improvements and any work done in violation of the Terms and Conditions in this Article 5 shall be deemed nonconforming. Upon written notice from the Declarant or ARC, an Owner, at his/her/its sole cost and expense, shall remove such non-conforming construction, alteration, landscaping, improvement or other work and shall restore the Structure or Unit to substantially the same condition that existed prior to the conforming work. Should an Owner fail to remove and restore as required hereunder, the Declarant shall have the right to enter onto the Lot and remove the violation and

restore the Structure or Unit to substantially the same condition as existed prior to the nonconforming construction, alteration, landscaping, improvement or other work without being deemed as a trespasser.

5.13 **Contractors**. Any contractor, subcontractor, employee, agent or invitee of an Owner who fails to comply with the Terms and Conditions herein may be excluded from the Project by Declarant.

## ARTICLE 6 USE RESTRICTIONS

The Property is subject to the following initial use restrictions which shall govern construction and activities within the Project.

6.1 **Nuisance**. No noxious or offensive activity shall be carried on, in or about the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any property or liability insurance for or decrease the value of the Lots or Units. Without limiting the foregoing, any violation of any provision of this Declaration or any activity within the Project which constitutes a violation of any applicable law, ordinance, or governmental regulation shall be deemed a nuisance.

6.2 **Parking**. Except for “customary parking,” “business parking,” and “temporary parking,” as permitted by this Section 6.2, no vehicles of any type (including, without limitation, automobiles, trucks, motorcycles, vans, recreational vehicles, boats and trailers) shall be parked, stored, or located within any portion of the Project, except on asphalt parking pads, behind fencing, and behind the front plane of the structure constructed on the Lot. For purposes of this Section, “customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the Lot/Unit’s garage or driveway. Customary parking applies to any type of recreational, oversized, or commercial vehicle or any trailer. “Business parking” shall mean business vehicles required as a part or normal business operations for the Lot/Unit. “Temporary parking” shall mean parking on public roadways of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants.

6.3 **Unsightly Items**. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Lots and shall not be allowed to accumulate therein or thereon. Trash and garbage shall be properly and promptly disposed. Trash and recycling containers and machinery and equipment not a part of the Lots, shall be stored out of sight.

6.4 **Shooting and Hunting**. Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, anywhere within the Project is prohibited.

6.5 **Animals**. Animals generally kept in businesses such as dogs, cats, birds, fish, hamsters, and ferrets may be kept in the Project consistent with County ordinance.

6.6 Aerials, Antennas, and Satellite Systems. All exterior aerials, antenna and satellite dishes must be installed and positioned to be as unobtrusive as possible and may not be placed anywhere on the front plane of the structure, subject, however, to Federal Communication Commission guidelines, rules and regulations, and other applicable law.

6.7 Temporary Structures. Except as provided in Article 9 below, no structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or any Lot.

6.8 Signs. Signs and advertisements must be kept in accordance with Article 9 below.

6.9 Commercial Occupancy. Use of a Lot or Unit is limited to Commercial residential occupancy. The business activity conforms to all zoning and legal requirements for the Project and the ARTICLE 7

## ARTICLE 7

### LEASING

7.1 Leasing. Leasing of a Lot or Unit shall be governed by this Article 7. Any Lot or Unit may be leased.

(a) Any lease or agreement must be for an initial term of at least six (6) months, and shall provide as a term of the agreement that the Occupant shall comply with this Declaration and that any failure to comply shall be a default under the lease or agreement. If a lease (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant.

(b) An Occupant may not occupy any Lot or Unit for transient, short-term (*i.e.*, initial lease term less than six (6) months), or seasonal use whether for pay or not.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Enforcement. The Declarant and each Owner shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation. The prevailing party in any enforcement action shall be entitled to recover its attorneys' fees and costs.

8.2 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Lot or Unit, each Owner and Occupant consents to the rights reserved to the Declarant in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration and the Plat; subject to the limitations in Section 9.4. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Declarant, with full right of substitution, as the

attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Declarant's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

8.3 **Security.** The Declarant shall not, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project and shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that the Declarant owed no duty to any Owner or Occupant related to security or criminal conduct. By taking title to a Lot or Unit and/or taking up business in the Project, Owners and Occupants specifically waive any such claim and assume all risks for loss or damage to Persons or property resulting from criminal conduct.

8.4 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Declarant, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

8.5 **No Representations and Warranties.** EACH OWNER UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE TO A LOT OR UNIT OR TAKING UP BUSINESS IN THE PROJECT THAT THE DECLARANT HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT HE/SHE HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

## **ARTICLE 9** **DECLARANT RIGHTS**

9.1 **Special Declarant Rights.** Notwithstanding any herein to the contrary, the Declarant shall have the all rights and powers provided for in this Article 9. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the provisions therein shall all nonetheless be subject to the terms in this Article 9.

9.2 **Declarant Control Period.** For purposes of this Article 9, and as used in this Declaration, the "Declarant Control Period" shall mean and refer to the period of time during which the Declarant owns any Lot or Unit or other land within the Project.

9.3 **Easement Rights.** The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to

utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Declaration.

- 9.4 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to seek amendment, change, or modification of the Plat, subject only to the requirement that the Declarant get approval from any Owner of a Lot or Unit that has any boundary modified by the Plat.
- 9.5 Expansion of Project/Additional Land. The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason, consistent with County ordinance.
- 9.6 Assignment of Special Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.
- 9.7 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Lots owned by the Declarant.
- 9.8 No Modification of Declarant Rights. Declarant Rights in this Declaration and, specifically, in this Article 9 shall not be substantively or procedurally altered without the written consent of the Declarant during the Declarant Control Period. Any attempt to amend without proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of Article 9 without the consent of the Declarant.
- 9.9 Use of Lots or Units for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Lot or Unit owned by it in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of Lots or Units owned by the Declarant or to be added to the Project, as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Lot or Unit with the permission of the Owner of that Lot/Unit (who may be the Declarant) or in one or more separate structures, trailers, or facilities placed in the Project to aid the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street parking as parking for sales only or to otherwise restrict and use any common parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.
- 9.10 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 9 shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Each Owner, by taking title to a Lot or Unit, waives

and disclaims any such duty and affirmatively acknowledges that no such duty exists or should be imposed as a result of the Special Declarant Rights.

## ARTICLE 10

### CONFLICT AND LITIGATION AVOIDANCE

10.1 **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit or Lot that Owner is purchasing or any aspect of the Project, all prior to purchasing a Lot or Unit. Having had the ability to inspect and having paid market price for a Lot or Unit in the condition it and other Lots or Units in the Project are in at the time of purchase, it is acknowledged that it is unfair and improper thereafter to seek to have the Declarant and/or the Builder or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of a Lot or Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Lots or Units during any period when litigation is pending. For this reason, the Owners and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners.

10.2 **Owner Warranties.** The Declarant may, but is not obligated to, provide certain warranties to the Owners related to the Lots purchased. The first Owner of a Lot to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. No Owner shall have the right to assign any rights of any kind to any other Person related to pursuing litigation against the Declarant.

10.3 **Waiver of Subrogation and Release.** Each Owner waives any right to subrogation against the Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant (including their respective principles, officers, managers, shareholders, members, employees, agents, and representatives). To the fullest extent permitted by law, each Owner, by taking title to a Lot or Unit, releases the Declarant (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives). Each Owner, by taking title to a Lot or Unit, agrees to indemnify and defend the Declarant, and any of their respective officers,

employees, owners, or representatives, from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

10.4 Declarant Litigation.

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed:
  - (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined in Subsection 10.4(d) below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process;
  - (ii) Mandatory Mediation: if the dispute is not resolved within the Right to Cure period, the parties shall participate in mediation prior to taking further action.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, or subcontractor by any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall work, in good faith, to agree upon the arbitrator, arbitration service, and all aspects of the arbitration and mediation proceedings.
- (c) In the event the parties are unable to agree regarding the mediation or arbitration service, the dispute shall be submitted to the American Arbitration Association for mediation and/or arbitration. Arbitration rules applicable to construction disputes shall apply, subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the arbitration rules and this Declaration.
- (d) For purposes of this Section 10.4, "Notice of Claim" shall mean and include the following information: (i) The nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged condition, if applicable; (v) samples of any alleged defective conditions or materials; (vi) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (e) Except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner, by taking title to a Lot or Unit, shall not and agrees not to commence or maintain any arbitration, litigation, or other action against the Declarant, or any of its principles, officers, managers, shareholders, members, employees, agents and

representatives, for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.

## ARTICLE 11

### INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 11.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, and then the Declaration.
- 11.2 Severability. Invalidation of any of the Terms and Conditions (or any portion thereof) by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 11.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes stated in the Recitals.
- 11.4 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 11.5 Effect of Declaration. This Declaration is made solely for the purposes set forth in the Recitals and the Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with applicable laws, ordinances, regulations and the like applicable thereto. The Declarant shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.
- 11.6 Governing Law. This Declaration is made pursuant to and shall be interpreted and enforced under the laws of the State of Utah.
- 11.7 Amendment. Subject to the exceptions in Article 9, this Declaration may be amended only by consent of all Owners.

[Remainder of this page intentionally left blank]

Dated this 15<sup>th</sup> day of NOV, 2021.

HCA INVESTMENTS, LLC

By:

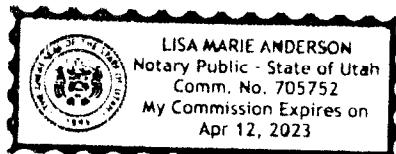
Jeremy R. Jaggi

Its: Managing Director

STATE OF UTAH )  
 ) ss.  
COUNTY OF Morgan )

On this 15, day of NOV, 2021, personally appeared before me  
Jeremy Jaggi, whose identity is personally known to me, (proven  
on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is  
the Managing Director of HCA Investments, LLC and that said document was signed by him/her  
on behalf of said entity with all necessary authority, and acknowledged to me that said entity  
executed the same.

Lisa Marie Anderson  
Notary Public



**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

The real property, Lots, and Units referred to in the foregoing DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CANYON VIEW COMMERCIAL SUBDIVISION are located in Morgan County, Utah and are described more particularly as follows:

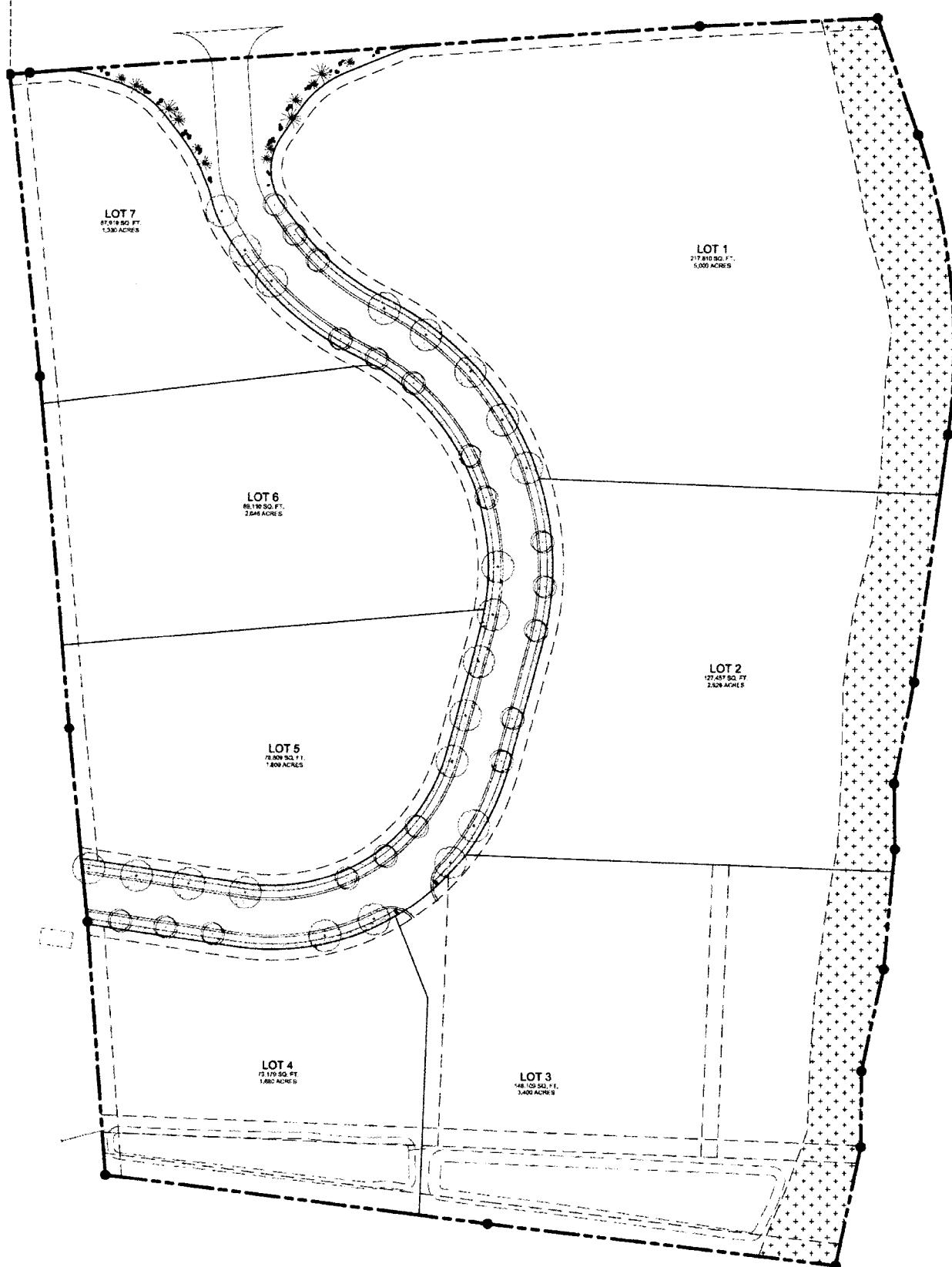
**Boundary Description**

COMMENCING AT THE NORTHWEST CORNER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE, SOUTH 89°44'44" EAST ALONG THE SECTION LINE COMMON WITH SECTIONS 23 AND 26, A DISTANCE OF 573.42 FEET; THENCE, SOUTH, A DISTANCE OF 2111.23 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF OLD HIGHWAY ROAD (STATE ROAD 167, 66 FEET WIDE) AND THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE ALONG THE SOUTH LINE OF SAID OLD HIGHWAY ROAD THE FOLLOWING THREE (3) COURSES: 1) ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1153.55 FEET, THE CENTER OF WHICH BEARS SOUTH 05°14'37" EAST, THROUGH A CENTRAL ANGLE OF 00°55'21", A DISTANCE OF 18.57 FEET (CHORD BEARS NORTH 85°13'04" EAST, A DISTANCE OF 18.57 FEET); 2) NORTH 85°40'44" EAST, A DISTANCE OF 628.27 FEET; 3) NORTH 87°08'07" EAST, A DISTANCE OF 166.23 FEET TO THE APPROXIMATE CENTERLINE OF GORDON CREEK; THENCE, ALONG SAID APPROXIMATE CENTERLINE THE FOLLOWING NINE (9) COURSES: 1) SOUTH 19°38'46" EAST, A DISTANCE OF 115.36 FEET; 2) ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 600.00 FEET, THROUGH A CENTRAL ANGLE OF 27°04'11", A DISTANCE OF 283.47 FEET (CHORD BEARS SOUTH 06°06'41" EAST, A DISTANCE OF 280.85 FEET); 3) SOUTH 07°25'25" WEST, A DISTANCE OF 234.49 FEET; 4) SOUTH 10°58'51" WEST, A DISTANCE OF 96.72 FEET; 5) SOUTH 01°02'04" EAST, A DISTANCE OF 60.92 FEET; 6) SOUTH 04°56'47" WEST, A DISTANCE OF 112.84 FEET; 7) SOUTH 11°49'14" WEST, A DISTANCE OF 98.23 FEET; 8) SOUTH 00°13'28" WEST, A DISTANCE OF 71.57 FEET; 9) SOUTH 11°32'13" WEST, A DISTANCE OF 113.29 FEET TO A POINT ON THE NORTH LINE OF INTERSTATE 84; THENCE, ALONG SAID NORTH LINE THE FOLLOWING TWO (2) COURSES: 1) NORTH 83°25'09" WEST, A DISTANCE OF 326.97 FEET, 2) NORTH 83°02'14" WEST, A DISTANCE OF 360.80 FEET TO A POINT ON THE EAST LINE OF THE VAL L. & HEATHER L. POLL FAMILY TRUST PROPERTY AS SHOWN ON THAT CERTAIN SURVEY PREPARED BY GREAT BASIN ENGINEERING NORTH, DATED JUNE 16, 2009, AND FILED AS FILE NUMBER S607 IN THE MORGAN COUNTY RECORDERS OFFICE; THENCE, ALONG SAID EAST LINE THE FOLLOWING FOUR (4) COURSES: 1) NORTH 04°18'20" WEST, A DISTANCE OF 238.06 FEET; 2) NORTH 05°46'10" WEST, A DISTANCE OF 181.45 FEET; 3) NORTH 05°12'46" WEST, A DISTANCE OF 329.93 FEET; 4) NORTH 06°06'37" WEST, A DISTANCE OF 284.15 FEET TO THE POINT OF BEGINNING.

CONTAINS 20.047 ACRES, MORE OR LESS

**EXHIBIT "B"**  
**SUBDIVISION TREE and LANDSCAPING PLANTING PLAN**

Landscape Plan Part 1 of 2



## Landscape Plan Part 2 of 2



Consultant

Seal



These drawings are products of service and are not to be sold, reproduced or given away. Any unauthorized use or reproduction of these drawings will be considered a violation of the law. These plans are not to be considered engineering drawings and are not to be used for engineering purposes. They are to be used for landscape architecture purposes only. Any changes to these drawings must be made by the designer and signed by the designer. Any changes to these drawings shall have precedence over scaled dimensions.

## PLANT SCHEDULE

SYMBOL	BOTANICAL NAME	COMMON NAME
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	ACER GRANDIDENTATUM	BIG TOOTH MAPLE
	ACER GRANDIDENTATUM	BIG TOOTH MAPLE
	GLEDTISIA TRIACANTHOS INERMIS 'SUNBURST'	SUNBURST HONEYLOCUST
BOULDERS		

Rev	Description
By	
Date	
△	

Project Name	CANYON VIEW COMMERCIAL PHASE 1
	5750 WEST OLD HIGHWAY ROAD
	MT. GREEN, MORGAN COUNTY, UTAH
Sheet Title	LANDSCAPE MASTER PLAN

Drawn/Checked By

BD

Date

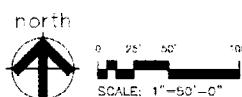
01/12/2020

Project Number

2021011201

Sheet Number

L 1.01



**EXHIBIT "C"**  
**FENCING PLAN**

All fencing for this project must conform to Morgan County Code Section 8-6-37 as outlined below.

E. Fences in Commercial, Industrial, Institutional, And Multiple-Family Developments: For all commercial, industrial, institutional, and multiple-family developments, the following shall apply to any lot or parcel:

1. A wall or fence shall be a maximum of six feet (6') in height, with the exception that any wall or solid fence located within twenty feet (20') of a public street intersection shall be a maximum of three feet (3') in height, and any fence seventy five percent (75%) or more open, located within twenty feet (20') of a public street, shall be a minimum of four feet (4') in height.
2. Any outdoor storage area or commercial storage facility shall be screened from view by a minimum six foot (6') high wall or a solid barrier, sight obscuring fence constructed of or finished with materials to match or complement the main building material on site.
3. A solid, sight obscuring fence or wall of masonry, wood, vinyl, or similar material shall be constructed along property lines which adjoin an area which is primarily residential. Such wall or fence shall be a minimum of six feet (6') in height, except that the first twenty feet (20') from the street property line shall be stepped down to three feet (3') in height. The fence or wall shall be constructed of materials compatible with the principal buildings or architectural character of the surrounding neighborhood.
4. Transformers, substations, transmission, pump and/or related generator facilities shall be fenced or screened with a sight obscuring fence or wall constructed of materials compatible with the principal buildings or architectural character of the surrounding neighborhood if located within a commercial or residential area or if located in an industrial, agricultural or open space area fenced for security purposes with a minimum of an open style fence. All such fences or walls shall be a minimum of six feet (6') in height.