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SHERYL L. WHITE, DAVIS CNTY RECORDER  
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REC'D FOR TOM SCHULTZ CONSTRUCTION LLC

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THOMAS INDUSTRIAL PARK CONDOMINIUMS III

TOM SCHULTZ CONSTRUCTION, L.L.C., a Utah limited liability company ("Declarant"), is the owner of certain real property located in North Salt Lake, Davis County, State of Utah, and more particularly described in Exhibit "A" attached hereto (the "Property"). Declarant hereby declares that the Property, together with all improvements, easements, right and appurtenances belonging thereto, is subject to the covenants, conditions and restrictions as set forth herein ("Declaration").

### RECITALS

- A. The Property consists of the land described in Exhibit "A", together with all improvements, easements, rights and appurtenances belonging thereto, which land will be subdivided into individual units ("Unit" or "Units") as a condominium business park.
- B. Declarant intends to sell/lease to various purchasers fee title to the individual Lots subject to the covenants, conditions, restrictions, limitations and easements set forth herein.
- C. Declarant intends, by filing this Declaration and the Condominium Plat, to declare that the Property is an industrial park known as the "Thomas Industrial Park Condominiums III".

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that all of the Property is hereby subjected to the provisions of this Declaration, and shall be held, sold, transferred, conveyed, used, leased, occupied, developed, mortgaged, hypothecated, or otherwise encumbered, subject to the covenants, conditions, restrictions, stipulations, agreements, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property.

### ARTICLE I MUTUAL AND RECIPROCAL BENEFITS

1.1 MUTUAL AND RECIPROCAL BENEFITS: All of the covenants, conditions, restrictions, stipulations and agreements are made for the direct, mutual and reciprocal benefit of each and every Unit and are intended to create reciprocal rights and obligations between the respective owners of all the units, and to create a privacies of contract and estate between the grantees of the Units, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all other Units in the Property and in consenting adjacent property.

ARTICLE II  
DURATION

2.1 DURATION: This Declaration shall remain in effect for a period from the date hereof through January 1, 2030, at which time the covenants, conditions, restrictions, stipulations and agreements shall be automatically extended for successive periods of ten (10) years each, unless the then owners of at least eighty percent (80%) of the units agree to amend or release this Declaration in whole or in part, and such agreement is evidenced by an appropriate written instrument, executed by the then owners of at least eighty percent (80%) of said Unit owners, and filed with the County Recorder's Office, Davis County, Utah.

ARTICLE III  
PERSONS AND PROPERTY AFFECTED

3.1 PERSONS AND PROPERTY AFFECTED: All covenants, conditions, restrictions, stipulations and agreements as provided for herein shall run with the Units, and all owners, purchasers or occupants hereof shall by acceptance of contracts or deeds, possession or occupancy, be conclusively deemed to have consented to and agreed with the present and future owners of the Units, and with their respective successors and assigns, to conform to and observe the covenants, conditions, restrictions, stipulations and agreements as set forth herein, and to the use of the Units and construction of buildings and improvements thereon.

ARTICLE IV  
AMENDMENT

4.1 AMENDMENT: This Declaration may be changed, altered or amended at any time by the affirmative action of the owners of at least eighty percent (80%) of the Units in the Condominium, and, if this Declaration is adopted by contiguous property owners, by the affirmative action of the owners of at least eighty percent (80%) of those property owners, including any subdivided Units created there under. The changes to this Declaration shall be evidenced by the execution of an appropriate written agreement and filed for record in the County Recorder's Office, Davis County, Utah. In no event, however, shall this Declaration be released as to the Property, unless all Unit owners in the Condominium provide written consent by appropriate agreement which is then filed for record in the County Recorder's Office, Davis County, Utah.

ARTICLE V  
ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE

5.1 COMMITTEE AND MEMBERS: An Architectural and Structural Control Committee (hereinafter "the Committee"), consisting of three (3) members, is hereby created. The initial members of the Committee shall be appointed by the Declarant. The Declarant may fill vacancies on the Committee and remove members thereof at its pleasure; provided, however, that after ninety percent (90%) of the units in the Condominium have been sold (either deeded or sold under contract of sale), upon written designation by owners (either in fee or by contract to purchase) of at least eighty-five percent (85%) of the Units in the Condominium, of a person whom such owners desire to make a member of the Committee, the Declarant will appoint such person to the Committee, and if necessary, will remove from the Committee an existing member in order to create a vacancy for the new appointment; provided further that in the event the Declarant desires no further involvement with the Committee either by being a member or by appointing or removing members, the Declarant shall give written notice to the Unit owners in the Condominium and the Unit owners thereafter immediately hold and elect or appoint members of the Committee. The election or appointment shall be by the vote or consent of the owners of more than fifty percent (50%) of the Units in the Condominium.

5.2 COMMITTEE FUNCTION AND QUORUM: The functions of the Committee shall be, in addition to the functions set forth elsewhere in this Declaration, to pass upon, approve or reject any plans or specifications for structures to be erected or remodeled on units in the Condominium, so that all structures shall conform to the restrictions contained herein and to the general development plans of the Declarant and of the Committee, for the improvement and development of the Property and adjacent land. Nothing in this section shall be construed as authorizing or empowering the Committee to waive any restrictions which are set forth in this Declaration except as herein specifically provided. The Committee may act by any two (2) of its members, and any authorization, approval or action taken by the Committee must be in writing signed by a minimum of two (2) members of the Committee.

5.3 COMMITTEE APPROVAL REQUIRED: No building or structure, or other facility, shall be erected, remodeled or placed on any Unit without the written approval first having been obtained from the Committee as to the compliance with this Declaration and as to location, height, design, materials and harmony with existing structures. No construction of any kind or nature on any of the Units shall be commenced until the curb grade has been established. Except for the approval of a variance or exception consistent with the criteria set forth in section 5.6, approval by the Committee shall not effect, or constitute a waiver of the rights of any person, Unit owner or the Declarant who may enforce the provisions of this Declaration.

Unit owners shall submit to the Committee, in duplicate, the following design plans: (a) a site plan including topographic information and a footprint of all proposed structures or improvements, including footprint or location of fences and walls; (b) elevations of the front, rear, and both sides of the structure(s); (c) landscaping plans showing the type and location of plant

materials and any final site grading to be performed; (d) a fence or wall plan showing any proposed fences or walls (all the foregoing hereinafter referred to as the "Plans").

Within thirty (30) days after receipt of the Plans by the Committee, the Committee shall approve or disprove the Plans and shall evidence such approval or disapproval by the following: (a) by issuing a written approval or disapproval letter signed by a majority of the Committee, and (b) by affixing "Stamp of Approval" or "Stamp of Disapproval", as the case shall be, on one set of Plans and returning the same to the Unit Owner.

The submission of Plans shall be deemed received by the Committee only when two (2) complete and legible sets of the Plans as required above are delivered. The Committee shall not permit any oral modification of the Plans, and all Plans so submitted will be evaluated solely on the submitted Plans.

**5.4 COMMITTEE DECISION AND LIABILITY:** The Committee's approval or disapproval shall be in writing signed by a majority of its members. All decisions of the Committee shall be final and neither the Committee nor its designated representatives shall be subject to any liability therefore. Any errors or omissions in the design of any building or landscaping, and any violations of city ordinances, are the sole responsibility of the Unit owners and/or the Unit owner's designer, architect or builder. The Committee's review of plans shall in no way be concerned with the structural or mechanical integrity or ability of the building(s) or structure(s) or with the architectural or structural soundness thereof.

**5.5 ENFORCEMENT:** The Unit owners hereby agree that the Committee the Declarant, or any owner of a Unit within the Condominium or within adjacent plats, may institute in its own name any suit or suits necessary in order to obtain a decree for specific performance or any restraining order necessary to enforce the provisions of this Declaration, or for damages arising from the breach of any of the provisions of this Declaration.

**5.6 VARIANCE FROM OR EXCEPTION TO PROVISIONS OF THIS DECLARATION:** The Committee may, at any time, after receiving written application stating the basis therefore, grant variance from or exception to any requirements of Sections 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.11, 6.12, 6.14 and 8.4 of this Declaration, if the Committee finds, based upon the application or such further evidence or investigation as it may require that: (a) the strict application of any provision would result in exceptional practical difficulties to, or undue hardship upon the Unit owner, and (b) strict application of the provision or restriction is necessary to carry out the general purpose of this Declaration, and (c) the variance or exception would not be detrimental to any other Unit within the Condominium.

ARTICLE VI  
RESTRICTIONS ON USE – CONSTRUCTION – LOCATION OF IMPROVEMENTS

6.1 LAND USE: Each Unit shall be used for retail, office, warehouse and light manufacturing purposes. No Unit shall be used for heavy manufacturing purposes; for storage in bulk of junk, wrecked autos or secondhand material; for the manufacture, storage, distribution, or sale of any products or items which (a) shall increase the fire hazard of adjoining property, or (b) are "hazardous substances" as defined in any federal or state laws or regulations; or for any business which constitutes a nuisance or causes the emission of odors or a gas injurious to products manufactured or stored on adjoining premises or which emit undue noise or for any purpose which will injure the reputation of the Condominium or the neighboring property or for any use which is in violation of any of the laws of North Salt Lake or Davis County or the State of Utah.

6.2 SUBDIVIDED UNITS: No Units shall be subdivided.

6.3 SET BACKS: Any building or other structure constructed or situated on any Unit shall be in conformity with the minimum "set back" lines which may be fixed by the Declarant, or its successors and assigns, in the recorded Condominium plat, and in contracts or deeds to any or all of the Units. In the event, and notwithstanding the foregoing sentence, the front of each building or structure shall be located not less than thirty (30) feet from the front Unit line. The location of all buildings or structures must be approved in writing by the Committee prior to the start of construction and must comply with all applicable North Salt Lake, Utah, codes and regulations.

6.4 Building Type: No buildings or structures shall be erected, altered, or permitted to remain on any Unit other than buildings or structures approved prior to construction by the Committee. The Committee, in its sole and exclusive discretion, shall have power to limit the number of stories and the height of structures as to any or all Units if it deems such limitation is necessary to preserve the value of other Units.

6.5 TEMPORARY STRUCTURES: No trailer, basement, tent shack or other outbuilding shall be placed upon any Unit or used at any time within the Condominium as a temporary or permanent building without the written consent of the Committee. Subject to ordinances of North Salt Lake, Utah. A trailer or other temporary building may be placed upon the site during construction solely for the purpose of facilitating construction management and shall be removed from the Condominium immediately upon completion of construction of the building or structure in the Condominium.

6.6 DILIGENCE IN BUILDING: When the construction or remodeling of any building or other structure is once begun, work thereon must be prosecuted diligently and completed within twelve (12) months. No building or structure shall remain incomplete or any remodeling unfinished for any reason for a period in excess of twelve (12) months from the date physical construction is commenced.

6.7 COMPLIANCE WITH ZONING AND BUILDING ORDINANCES OF NORTH SALT LAKE: All excavation work, all foundations in the Condominium shall be done, performed, placed or constructed, as the case may be, in, on or upon the Units in accordance with the provisions of North Salt Lake Zoning and Building Ordinances in effect when the buildings are constructed or remodeled. This provision shall not affect the applicability of the other provisions hereof.

6.8 EASEMENTS: Easements and rights-of-way over portions of the Property have been dedicated as utility and drainage easements for the use of North Salt Lake and public or private utility companies or entities for drainage and/or the erection, construction, maintenance and operation therein or thereon of drainage conduits or pipes and for pipes, conduits, poles, wires and other means of conveying to and from the Units, gas, electricity, power, water, telephone and telegraph services, sewage and other services for convenience to the public and owners of Units, and for the flow of storm drainage, as are shown on the condominium plat. No structural improvements shall be placed in any such easements.

6.9 PROHIBITION AGAINST SOIL EROSION AND RUNOFF: It shall be the responsibility of each Unit owner to direct site work relative to the Unit in such a manner as to minimize and control erosion and runoff both during and after the construction period. Construction and grading shall be conducted and completed in such a manner as to maintain all solid materials, including excavated and/or imported soils, on site and to prevent the movement of earth materials or construction debris onto neighboring property, including public streets, or into the storm drainage system.

6.10 SOILS AND GEOTECHNICAL REQUIREMENTS: Soils and geotechnical reports for the Property have been issued and the reports have been filed with the North Salt Lake Planning Commission. All requirements of North Salt Lake and of these soils and geotechnical reports must be complied with in the construction of all buildings and structures on all Units. The design, and subsequently the actual construction, of all footings and foundations must be certified by a qualified engineer registered with the State of Utah. The Declarant makes no warranties of any kind relative to soils or geotechnical matters.

6.11 LANDSCAPING: Units shall be landscaped and planted within three (3) months of the date the building or structure is ready for occupancy (or by the succeeding April 30<sup>th</sup> if a building or structure is ready for occupancy between October 15<sup>th</sup> and the following April 1<sup>st</sup>). All landscaping shall be adequately maintained with scrubs trimmed, lawns mowed and watered.

6.12 ADDITIONAL ARCHITECTURAL GUIDELINES: In addition to those requirements set forth elsewhere in this Declaration, the following architectural guidelines shall apply to all Units:

- a. Harmony in building. The buildings or structures shall be either masonry, block, concrete or frame with stucco, or a combination thereof, as approved by the

Committee. No building or structure shall have a metal outer wall or wall covering (metal roofs and roof coverings will be acceptable).

b. Fences. The height of all fences shall be in conformity with North Salt Lake requirements. All fence materials and placement of all fences must be approved by the committee prior to erection. No fence or wall shall be erected on any unit nearer to the front lot line than the minimum building set back line unless similarly approved. Unless otherwise approved by the committee, all rear yard-line fences must be placed on the rear lot line.

6.13 PARKING REQUIREMENTS: Employee, customer, owner or tenant parking will not be permitted on any of the private or public dedicated streets in the subdivision and it will be the responsibility of the Unit owners, their successors and assigns to provide such parking facilities as needed on their own lot. Minimum requirements are as follows:

- a. One parking space for every vehicle used in conducting the business plus one parking space for every 1,000 square feet of building area or one parking space for every two employees working on the highest shift, whichever is the greater.
- b. Where the parking area is to be located in front of the main building, at least fifteen (15) feet landscaped setback will be provided between the front lot line and the parking area.
- c. All parking areas must be paved with a year-round surface (asphalt or concrete) and adequately drained.

6.14 SIGNS: Signs shall be allowed only as approved by the City of North Salt Lake and by the committee.

## ARTICLE VII ADDITIONAL COVENANTS

7.1 CONCRETE MAINTENANCE: Each Unit owner shall at all times keep the curb and gutter in front of its Unit in good condition and shall repair or cause North Salt Lake to repair cracks or breaks in such concrete within a reasonable time, not to exceed sixty (60) days, after receiving notification from the Committee to do so.

## ARTICLE VIII NUISANCES

8.1 NOXIOUS OR OFFENSIVE ACTIVITIES: No noxious or offensive activity shall be carried out in any Unit within the condominium, nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood. The Committee shall have the authority to determine if ~~an~~ activity is noxious or offensive and constitutes an annoyance to the condominium.

8.2 DRILLING AND MINING: There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any unit.

8.3 RUBBISH: No rubbish shall be stored or allowed to accumulate except in sanitary containers.

8.4 TRANSMITTING AND RECEIVING EQUIPMENT: No external radio, citizen's band, ham radio or other transmitting and/or receiving equipment shall be placed upon any building, structure or unit, provided however, a television antenna or satellite dish receiver may be placed on the Unit at a secluded location, at a height and in a manner specifically approved by the committee in writing prior to erection.

8.5 CONSTRUCTION DEBRIS: All Unit owners shall properly maintain their Units during the construction period so as to insure that no "spoils" or any other debris from construction shall be permitted to blow or otherwise be deposited upon any adjoining Lot or upon any other private or public property or public right-of-way. Unit owners shall take whatever action is necessary to prevent run-off onto, and resultant erosion of, adjoining private property. Unit owners agree that the Declarant or the Committee shall be empowered to clean up any and all "spoils" or construction debris which are located upon any adjoining public or private property resulting from activities of a Unit owner, his builder or any other person employed or otherwise controlled by a Unit owner, and record a lien against the Unit owners property to secure the repayment of all sums expended by the committee or by the Declarant in cleaning up and removing said 'spoils' and debris from adjoining public or private property if the same is not voluntarily cleaned up and removed by the Unit owner within forty-eight (48) hours of written notice from the Declarant or the Committee identifying the required clean-up and removal work.

ARTICLE IX  
MANNER OF VOTING

9.1 MANNER OF VOTING: In voting, pursuant to the provisions of Article II, Article IV and Article V hereof, the owners of record of each Unit shall be entitled to one vote for each Unit owned, and any amendment or repeal of this Declaration or change in the membership of the committee resulting from any such vote shall be evidenced by an appropriate written instrument signed by the required number of Unit owners, which instrument shall be acknowledged and promptly recorded in the County Recorder's Office, Davis County, Utah.

ARTICLE X  
VIOLATIONS OF RESTRICTION

10.1 VIOLATIONS OF RESTRICTIONS AND PENALTIES: Violation of any of the covenants, conditions, restrictions, stipulations, or agreements herein contained shall give the committee, the Declarant and their successors and assigns, the right to enter into the unit on which said violation or breach exists, and to summarily abate and remove, at the expense of the owner, any erection, thing or condition that may be or exist thereon contrary to the provisions hereof, without being deemed guilty of trespass. The result of every action or omission whereby any covenant, condition, restriction, stipulation, or agreement of this Declaration is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be applicable against such condition. Such remedy shall be deemed cumulative and not exclusive.

ARTICLE XI  
GENERAL PROVISIONS

11.1 EFFECT OF WAIVER OR BREACH OR FAILURE TO ENFORCE: Each and all of the covenants, conditions, restrictions, stipulations, and agreements contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions, stipulations, or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto that no waiver of a breach of any of the covenants, conditions, restrictions, stipulations, and agreements herein contained shall be construed to be of any other breach of the same, or other covenants, conditions, restrictions, stipulations, and agreements contained herein, nor shall failure to enforce any one of such covenants, conditions, restrictions, stipulations, or agreements, either by forfeiture or otherwise, be construed as a waiver of any other covenant, condition, restriction, stipulation, or agreement contained in this Declaration.

11.2 SEVERABILITY: Invalidation of any one of or any portion of any one of these covenants, conditions, restrictions, stipulations, and agreements by judgment or court order shall in no wise affect any of the other provisions of the Declaration which shall remain in full force and effect.

11.3 SECTIONS CAPTIONS: The section captions and phrases as to the contents of particular sections are inserted only as a matter of convenience and for reference and in no way are intended to be part of this Declaration or in any way to define, limit or describe the scope or intent of the particular section to which they refer.

11.4 ATTORNEYS' FEES AND COSTS: in the event any claim demand or lawsuit is made or instituted to enforce any of the provisions contained in the Declaration, the prevailing

party shall be entitled to recover its costs and expenses including reasonable attorneys' fee and all court costs, as determined by the court.

11.5 RELATIONSHIP TO CITY, COUNTY AND STATE ORDINANCES: The provisions contained in the Declaration are in addition to the effective laws and ordinances of North Salt, Davis County and the State of Utah. In the event of any conflict between the provisions of this Declaration and the effective laws and ordinances of North Salt Lake, Davis County, and the State of Utah, the most restrictive provision shall apply.

IN WITNESS WHEREOF, the undersigned has executed this document this 5 day of FEBRUARY 2002.

Tom Schultz Construction, L.L.C.

A Utah limited liability company

By: Thomas Schultz

Thomas Schultz - Owner

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

On the 5<sup>th</sup> day of February, <sup>2002</sup> personally appeared before me Thomas Schultz, Owner, Tom Schultz Construction, L.L.C., a Utah limited liability company, known to me (or proved to me on the basis of satisfactory evidence) to be the signer of the foregoing instrument, who duly acknowledged to me that he executed the same for and on behalf of Tom Schultz Construction, L.L.C.

WITNESS my hand and official seal.



Larae H. Dillingham  
NOTARY PUBLIC

## Exhibit "A"

### Legal Description of the Property Located in Davis County, Utah

A parcel of land commencing at a point which lies N 89°36'51" E 990.00 feet along section line from the South One Quarter Corner of Section 3 Township 1 North Range 1 ~~East~~ Salt Lake Base & Meridian, and N 00°32'46" W 55.88 feet to the P.O.B. of Davis county North Wood Business Center recorded March 1997; and continuing along said Subdivision Boundary the following 4 courses, N00°32'46" 1266.96 feet N 89°30'22" E 410.00 feet, N 00°40'30" W 637.95 feet, and East 638.23 feet to the Point of Commencement, located on the North Boundary Line of the North Wood Business Center, and the East Right-of-Way line of Cutler Drive; said point being the Northwest Corner of the herein described Thomas Industrial Park Condominiums III, as follows:

East 238.75 feet;

South 187.50 feet;

West 239.05 feet; to a 330 foot radius curve to the left,

North Easterly along the East Right-of-Way line of Cutler Drive 13.97 feet.

(Chord bearing N 01°12'45" E 13.97 feet);

North 173.54 feet; to the point of beginning.

Contains 10 units, 44,766.61 SQ. FT. lot or 1.0277 acres more or less

Subject to Easements and Restrictive covenants.

*WEST*