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FINAL

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Shepard's Creek Homes, L.C.
132 South 600 East
Salt Lake City, Utah 84102
Attention Peter S. Cooke

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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 AUG 11 2:13 PM FEE 29.00 DEP MEC
REC'D FOR ASPEN TITLE INSURANCE AGENCY L

**RESIDENTIAL USE RESTRICTION AGREEMENT
FOR EXCEL PROPERTY**

THIS RESIDENTIAL USE RESTRICTION AGREEMENT FOR EXCEL PROPERTY (the "Agreement"), is made and entered into effective as of May 12, 2004 (the "Effective Date"), by and between EXCEL LEGACY CORPORATION, a Delaware corporation ("Excel"), and SHEPARD'S CREEK HOMES, L.C., a Utah limited liability company ("SCH"), on the basis of the following facts:

RECITALS

A. Excel is the owner of certain real property located in the City of Farmington, Davis County, Utah, the legal description of which is set forth on Exhibit "A-1," attached hereto and which is more fully depicted on Exhibit "A-2" attached hereto (the "Property").

B. Excel desires to re-zone the Property and to secure all other applicable governmental approvals to allow the Property to be used for residential purposes (the "Residential Zoning").

C. In order to facilitate Excel's efforts to secure the Residential Zoning for the Property, SCH and Residential Zone Owner Association, a Utah corporation ("RZOA"), have executed, acknowledged and delivered to Excel that certain Residential Consent, dated as of the Effective Date ("Residential Consent").

D. Notwithstanding the terms and conditions of the Residential Consent, SCH and Excel desire to impose certain restrictions on the types of residential uses that may be conducted on the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agree as follows:

1. Certain Definitions The undersigned are hereinafter sometimes individually called a "Party" and collectively called the "Parties." The past, present and future owners, shareholders, directors, members, managers, trustees, officers, employees, agents (including lawyers), affiliates, lenders, successors and assigns of a Party are hereinafter collectively called the "Related Parties."

2. Residential Use Restrictions Excel, on behalf of itself and all subsequent owners of the Property or any portion thereof, hereby acknowledges and agrees that the Property may not be used for any residential purpose that satisfies all of the following requirements (collectively, the "Use Restrictions"):

(a) The proposed residential use involves multi-family rental housing that is rented at below market rates in the ordinary course of business;

(b) The multi-family housing is qualified low-income housing under applicable federal or state law; and

(c) A material portion of the multi-family housing is financed or subsidized with federal or state bond financing, tax credits or other subsidies applicable to such low-income housing designation.

3. Termination of Use Restrictions. The Use Restrictions set forth in Section 2 hereof, as well as this Agreement, shall automatically terminate upon the first to occur of the following events (“Termination Date”): (a) no portion of the parcel of land described as Lot 1, Shepard Creek Southwest Subdivision, a planned unit development, according to the official plat thereof, as recorded in the office of the Davis County Recorder (Part of Parcel Identification Number 08-051-0148) (the “Low-Income Parcel”) shall constitute qualified low-income housing under applicable federal or state law; or (b) Peter Cooke or his estate shall no longer directly or indirectly own any fee or equity interest in the Low-Income Parcel. On the Termination Date, and without the need of any additional action by Excel or SCH, or their successors or assigns, the Use Restrictions, as well as this Agreement (other than the provisions of this Section 3), shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, upon the Termination Date, Excel and SCH, and their successors and assigns, shall execute, acknowledge and deliver any and all documents, agreements or instruments reasonably required by the other party to evidence the termination of the Use Restrictions and this Agreement.

4. Run With the Land; Assignment. This Agreement, and the rights, duties and obligations of Excel hereunder (in its capacity as the owner of the Property), shall be recorded against the Property run with the land and be binding on successive owners of the Property, or any portion thereof. Accordingly, all references in this Agreement to “Excel” shall mean Excel Legacy corporation, a Delaware corporation, or the then current owner(s) of the Property. Upon any sale, transfer or other disposition of the Property, or any portion thereof, by Excel or any subsequent owner of the Property, or any portion thereof (the “Transferor”), the Transferor shall be released and discharged from the performance and satisfaction of all duties, liabilities and obligations under this Agreement and such duties, liabilities and obligations shall thereupon become and be obligations of the subsequent owner of the Property, or the applicable portion thereof, whether or not such subsequent owner expressly assumes such duties, liabilities and obligations. In no event shall this Agreement be recorded against the Low-Income Parcel without the prior written consent of Excel, which consent may be granted or withheld in the sole and absolute discretion of Excel.

SCH may not assign or transfer this Agreement or any of its rights, duties and obligations under this Agreement, without the prior written consent of Excel, which consent may be granted or withheld in the sole and absolute discretion of Excel. Notwithstanding the foregoing, SCH may assign this Agreement to a Related Party of SCH upon the satisfaction of the following conditions precedent: (a) the applicable Related Party expressly assumes all of SCH’s rights, duties and obligations under this Agreement, (b) SCH delivers to Excel a copy of the fully executed assignment agreement between SCH and the applicable Related Party, which assignment agreement shall be in form and substance reasonably acceptable to Excel; and (c) the Related Party is approved by Excel, which approval shall not be unreasonably withheld.

5. Priority and Subordination. This Agreement shall be recorded against the Property senior to all mortgages, deeds of trust, fixture filings, liens, judgments, or other similar financial encumbrances (the “Financial Encumbrances”) (other than liens of non-delinquent taxes and assessments) encumbering

the Property Each Party shall take all actions and pay all costs necessary to have any pre-existing Financial Encumbrances (other than liens of non-delinquent taxes and assessments) on areas of the Property owned by that Party subordinated to this Agreement. All present and future lenders, lien holders and trust deed holders of any type holding Financial Encumbrances on any portion of the Property hereby agree (a) that such liens or encumbrances shall automatically be subordinate to this Agreement and all future amendments of this Agreement, and (b) to execute and deliver within 10 days following delivery of a written request for the same, any additional documentation that may be reasonably required by any of the Parties to confirm that subordination.

6. Amendment. This Agreement may be amended only by a document signed by SCH and the then owner(s) of the portion of the Property over which this amendment is recorded.

7. Legal Representation. Each Party shall be entitled, and is strongly encouraged, to have the advice of its own legal counsel in connection with this Agreement. Notwithstanding any prior representation, The Law Office of Mark F. Nelson is only representing SCH and not any other Party in connection with this Agreement.

8. Miscellaneous. The term of this Agreement shall commence as of the Effective Date and shall continue thereafter indefinitely, unless sooner terminated as provided herein. Any recitals in this Agreement are true and correct and are incorporated into this Agreement. Article and Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document. Signatures on this Agreement may be delivered by means of personal delivery, mail, electronic signal, and/or facsimile Except as otherwise expressly stated in this Agreement, the rights and obligations arising under this Agreement exist exclusively for the benefit and duty of the individuals and entities executing this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors, assigns, heirs and executors of the respective Parties. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may be waived only in a writing executed by the Party intended to be benefited by the provisions, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions The prevailing Party shall be entitled to be reimbursed by the non-prevailing Party for all reasonable costs, including reasonable attorneys' fees and costs, incurred by the prevailing Party in any action or defense involving this Agreement If any portion of this Agreement is held to be unenforceable, any enforceable portion thereof and the remaining provisions shall continue in full force and effect. The interpretation and enforcement of this Agreement shall be governed by Utah law without giving effect to those principles of conflict of laws that might otherwise require the application of the laws of another jurisdiction. Time is expressly made of the essence with respect to the performance of each and every obligation under this Agreement. Each Party shall bear its own costs, including attorneys' fees, in connection with the preparation, processing, and performance under this Agreement. The Parties shall cooperate together, take such additional actions, sign such additional documentation, and provide such additional information as reasonably necessary to accomplish the objectives set forth in this Agreement. The Parties have read this Agreement and have executed them voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice. In the event of any conflict between the terms of this Agreement and those of any document entered into prior to this Agreement, this Agreement shall govern. This Agreement may be enforced by rights and remedies in law and in equity, including injunctive relief, and all of such rights and remedies shall be cumulative. In the event that any legal action is instituted in connection with this Agreement, the same shall be brought and tried in Salt Lake City or Salt Lake County The Parties hereby consent to that jurisdiction. The Parties shall perform their respective

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obligations under this Agreement in compliance with all applicable laws. Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the Parties. Each individual executing this Agreement hereby represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement on behalf of the Party in question. Each Party hereby represents and warrants that such Party is duly authorized to enter into this Agreement and that this Agreement constitute the legal, valid, binding, and enforceable obligations of that Party. All limitations upon liability, indemnifications, representations and warranties in this Agreement, if any, shall survive the termination of this Agreement for any reason with respect to circumstances existing prior to that termination. This Agreement, together with the documents referred to herein, sets forth the only and entire agreement between the Parties respecting the subject matter set forth herein; and all prior agreements, whether oral or written, shall be deemed terminated and of no further force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date

EXCEL.

EXCEL LEGACY CORPORATION, a Delaware corporation

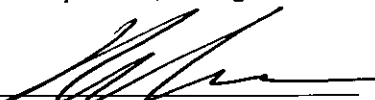
By 
Robert M. Siordia, Chief Operating Officer

SCH:

SHEPARD'S CREEK HOMES, L.C., a Utah limited liability company

By: PCH INVESTMENTS, L.C., a Utah limited liability company, Managing Member

By PSC DEVELOPMENT COMPANY, a Utah corporation, Manager

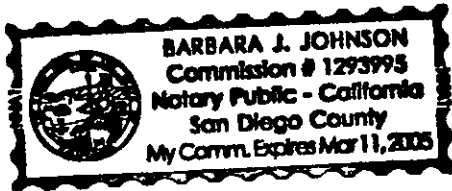
By 
Peter S. Cooke, President

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

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On May 12 2004, before me, Barbara J. Johnson, personally appeared Robert M. Siordia, personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

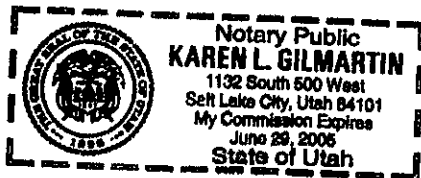


Barbara J. Johnson
Notary Public

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On May 12 2004, before me, Karen L. Gilmartin, personally appeared Peter S. Cooke, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Karen L. Gilmartin
Notary Public

E 2009472 B 3600 P 644
EXHIBIT "A-1"
TO RESIDENTIAL USE RESTRICTION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

(see attached page)

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ALL THAT FRACTIONAL PORTION OF SECTION 13, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 13; THENCE SOUTH 00°12'06" EAST ALONG THE WEST LINE OF SAID SECTION 13, A DISTANCE OF 468.75 FEET TO A POINT ON THE SOUTH LINE OF A 66 FOOT WIDE SHEPARD LANE, THENCE ALONG THE SOUTH LINE OF SHEPARD LANE SOUTH 89°41'42" EAST 572.38 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 333.45 FEET; THENCE SOUTH 89°43'17" EAST 395.96 FEET; THENCE SOUTH 03°37'15" EAST 477.66 FEET; THENCE SOUTH 72°22'00" WEST 593.07 FEET TO THE BEGINNING OF A NONTANGENT CURVE, HAVING A RADIUS OF 265.50 FEET, WHOSE CENTER BEARS NORTH 70°43'21" EAST WITH A CENTRAL ANGLE OF 20°23'56" (CHORD BEARING AND DISTANCE OF NORTH 9°04'41" WEST 94.03 FEET) AND FOR AN ARC DISTANCE OF 94.53 FEET; THENCE NORTH 1°07'17" EAST 315.01 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 182.50 FEET, A CENTRAL ANGLE OF 45°59'06" (CHORD BEARING AND DISTANCE OF NORTH 21°52'16" WEST 142.57 FEET) AND FOR AN ARC DISTANCE OF 146.47 FEET; THENCE NORTH 44°51'48" WEST FOR 295.20 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 117.50 FEET, A CENTRAL ANGLE OF 45°00'00" (CHORD BEARING AND DISTANCE OF NORTH 22°21'48" WEST 89.93 FEET) AND FOR AN ARC DISTANCE OF 92.28 FEET; THENCE NORTH 00°08'12" EAST FOR 129.41 FEET; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 35.00 FEET, A CENTRAL ANGLE OF 66°33'35" (CHORD BEARING AND DISTANCE OF NORTH 33°24'59" EAST 38.41 FEET) AND FOR AN ARC DISTANCE OF 40.66 FEET; THENCE SOUTH 89°41'42" EAST 421.86 FEET TO THE POINT OF BEGINNING

ALL THAT CERTAIN REAL PROPERTY SITUATE, LYING AND BEING IN DAVIS COUNTY, STATE OF UTAH, BEING A FRACTIONAL PORTION OF SECTION 13, TOWNSHIP 3 NORTH, RANGE 1 WEST. SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 13; THENCE SOUTH 00°12'06" EAST ALONG THE WEST LINE OF SAID SECTION 13, A DISTANCE OF 1482.87 FEET, THENCE SOUTH 88°52'42" EAST 347.61 FEET; THENCE NORTH 72°22'00" EAST 86.23 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUING NORTH 72°22'00" EAST 593.07 FEET; THENCE SOUTH 48°37'29" EAST FOR 261.11 FEET; THENCE SOUTH 21°15'52" EAST FOR 805.21 FEET; THENCE SOUTH 14°34'30" WEST 221.74 FEET; THENCE SOUTH 01°07'29" WEST 208.86 FEET; THENCE NORTH 89°27'31" WEST FOR 68.42; THENCE SOUTH 00°36'19" WEST FOR 13.87 FEET; THENCE NORTH 89°58'33" WEST FOR 82.94 FEET; THENCE SOUTH 00°39'18" WEST FOR 151.40 FEET; THENCE SOUTH 89°41'44" EAST FOR 81.63 FEET; THENCE SOUTH 89°58'33" EAST 68.37 FEET; THENCE SOUTH 01°07'29" WEST 403.70 FEET; THENCE NORTH 89°32'45" WEST 35.30 FEET; THENCE SOUTH FOR 206.08 FEET; THENCE NORTH 89°34'29" WEST FOR 587.70 FEET; THENCE SOUTH 34°29'26" WEST FOR 73.91 FEET; THENCE NORTH 01°07'05" EAST 601.65 FEET; THENCE WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET AND A CENTRAL ANGLE OF 164°34'41" (CHORD BEARING AND DISTANCE OF NORTH 32°47'55" EAST 158.55 FEET); THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, 229.79 FEET, THENCE WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 50°36'31" (CHORD BEARING AND DISTANCE OF NORTH 24°11'10" WEST 42.74 FEET); THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, 44.16 FEET; THENCE NORTH 01°07'05" EAST FOR 568.99 FEET; THENCE WITH A CURVE TO THE LEFT, HAVING A RADIUS OF 332.50 FEET AND A CENTRAL ANGLE OF 39°59'36" (CHORD BEARING AND DISTANCE OF NORTH 18°52'43" WEST 227.41 FEET); THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, 232.09 FEET; THENCE NORTH 38°52'31" WEST FOR 463.63 FEET; THENCE WITH A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.50 FEET AND A CENTRAL ANGLE OF 19°35'52" (CHORD BEARING AND DISTANCE OF NORTH 29°04'35" WEST 90.37 FEET); THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE, 90.81 FEET TO THE POINT OF BEGINNING.

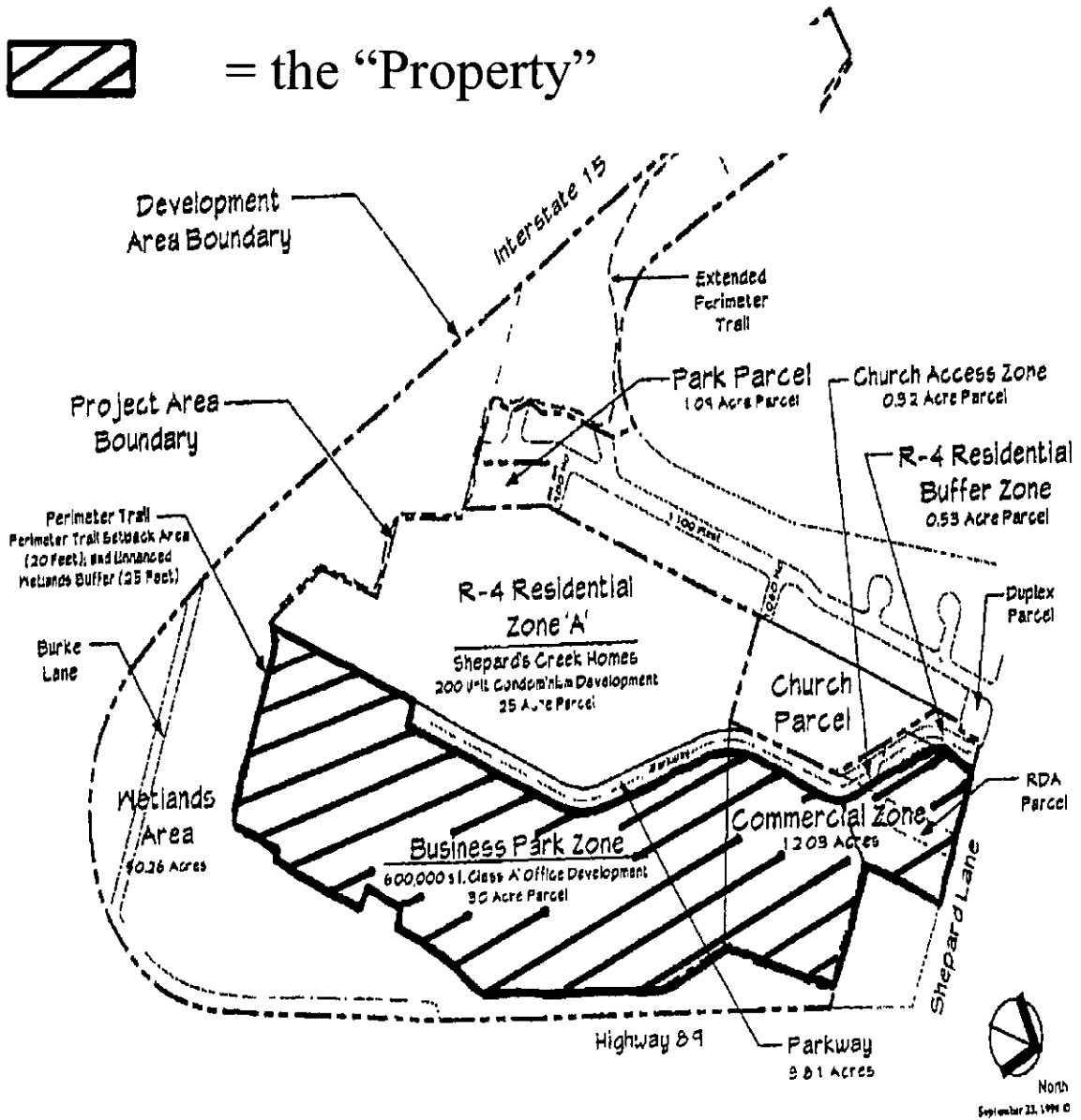
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EXHIBIT "A-2"
TO RESIDENTIAL USE RESTRICTION AGREEMENT

DEPICTION OF PROPERTY



= the "Property"

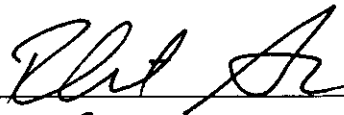


CONSENT OF BENEFICIARY

The undersigned hereby indicates its acceptance of this Agreement and agrees that this Agreement shall be senior in priority to that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of July 31, 1998, and recorded in the Official Records of Davis County on August 3, 1998, at Book 2336, Page 504, and File No. 1428484, among Shepard Creek Properties, LLC as Trustor, Associated Title Company as Trustee, and Excel Legacy Corporation as Beneficiary, securing a loan in the amount of Nine Million Seven Hundred Twenty-Two Thousand Twenty-Eight Dollars and Ninety Cents (\$9,722,028.90). That Deed of Trust shall be subordinate and subject to this Agreement and any amendments thereto, notwithstanding the fact that such Deed of Trust was recorded earlier in time than this Agreement and any such amendments

Dated: As of May 12, 2004

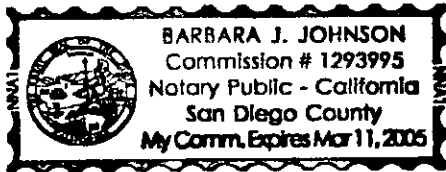
EXCEL LEGACY CORPORATION, a Delaware corporation

By 
Title COO

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On June 24 2004, before me, Barbara J. Johnson personally appeared Robert M. Stordia, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Barbara J. Johnson
Notary Public