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REC'D FOR ASPEN TITLE INSURANCE AGENCY L

BUSINESS PARK ZONE OWNER ASSOCIATION
358 South Rio Grande, Suite 250
Salt Lake City, Utah 84101
Attention: R. Kent Buie

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BUSINESS PARK ZONE OWNER ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into effective as of August 3, 2004 (the "Effective Date"), by the undersigned ("Declarant"). This Declaration is also executed by certain other individuals and entities solely for the limited purposes set forth next to their respective signatures hereto and those individuals and entities do not intend to otherwise undertake any other obligations under, or become parties to, this Declaration.

RECITALS:

A. This Declaration governs certain real property and improvements located west of Highway 89 and south of Shepard Lane in the City of Farmington, County of Davis, State of Utah, commonly known as the Business Park Zone as more particularly described on Exhibit "A" hereto (the "Project") and depicted on the master plan attached as Exhibit "B" hereto (the "Business Park Zone Master Plan"). As of the Effective Date, Declarant owns the entire Project.

B. The Project is subject to certain original "Governing Documents" as defined in that certain Master Development Agreement (Agreement No. 96-28) dated as of October 16, 1996, and recorded in the Official Records of Davis County on February 27, 1997, at Book 2099, Page 1248, and File No. 1306717, by and between the City and Prows, Becknell & Alles, L.L.C., and any amendments to any of the foregoing.

C. The Project is also subject to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Farmington Preserve Association dated as of July 1, 1998, and recorded in the Official Records of Davis County on August 3, 1998, at Book 2336, Page 449, and File No. 1428482, and any amendments to the foregoing (the "Master Declaration").

D. This Declaration is intended to create an Association to govern the entire Project as contemplated in the original Governing Documents and the Master Declaration. The Association shall constitute an "Owner Association" as contemplated in the original Governing Documents and a "Member Association" as contemplated in the Master Declaration.

I.

DEFINITIONS

1.1 **Articles.** The term "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

1.2 **Association.** The term "Association" shall mean the Business Park Zone Owner Association, a Utah nonprofit corporation, its successors and assigns.

1.3 **Association Rules.** The term "Association Rules" shall mean the rules and regulations governing the Association.

1.4 **Board.** The term "Board" shall mean the duly elected Board of Directors or Board of Directors of the Association.

1.5 **Bylaws.** The term "Bylaws" shall mean the Bylaws of the Association as amended from time to time.

1.6 **City.** The term "City" shall mean Farmington City.

1.7 **County.** The term "County" shall mean the County of Davis, Utah.

1.8 **Governing Laws.** The term "Governing Laws" shall mean all laws, ordinances, regulations, orders, judgments and legislation pertaining to and governing the Project and/or the activity or matter in question.

1.9 **Governing Documents.** The term "Governing Documents" shall mean the original Governing Documents, the Master Declaration, and this Declaration, as each of such documents may hereafter be amended from time to time.

1.10 **Institutional Holder.** The term "Institutional Holder" shall mean any holder (beneficiary) of a Senior Mortgage which encumbers any portion of a Zone, which holder is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any real estate investment trust, or any federal or state agency.

1.11 **Member.** The term "Member" shall mean those individuals and entities entitled to membership in the Association. The only Owner that may be a Member shall be an Owner that owns any one or more entire Zones in the Project. The Owner of any area less than an entire Zone in the Project shall not be a Member, except that if two or more Owners hold undivided interests in an entire Zone, then (a) all of those Owners taken together shall constitute the Member associated with that Zone, and (b) the consent or joinder by the Owners holding a majority of the fractional ownership interests in that Zone shall be required for an approval, consent or other act of the Member associated with that Zone. Notwithstanding the foregoing, if at the time in question there is a Member Association as regards an entire zone, then the Member for that Zone shall be the Member Association. Persons or entities that hold an interest in a Zone merely as security for the performance of an obligation shall not be Members.

1.12 **Member Association.** The term "Member Association" means any owner association that is established and operates pursuant to covenants, conditions and restrictions recorded against any one or more entire Zones in the Project. Member Association shall not include any association that is established and operates pursuant to covenants, conditions and restrictions recorded against

less than an entire Zone in the Project. Member Association shall not include the Association or any other owner association which is established and operates pursuant to covenants, conditions and restrictions recorded against all the Zones in the Project.

1.13 **Mortgage.** The term "Mortgage" shall mean any duly recorded and valid mortgage or deed of trust encumbering any portion of a Zone.

1.14 **Owner.** The term "Owner" shall mean the holder of record ownership of fee title interest in any portion of a Zone.

1.15 **Party.** The term "Party" shall mean the Association, a Member and/or an Owner. The term "Parties" shall mean more than one Party.

1.16 **Senior Mortgage.** The term "Senior Mortgage" shall mean any Mortgage that is (a) recorded against any portion of a Zone prior to the recordation of a lien for delinquent assessments by the Association; and (b) either (i) is recorded prior to all other loans encumbering the area in question, or (ii) secures an obligation with an original principal sum in excess of \$1,000,000 associated with the area in question. Encumbrances for loans of less than \$1,000,000 recorded in second or lower position shall not be Senior Mortgages without an express written subordination agreement from the Association which may be given or withheld in the Association's sole discretion.

1.17 **Directors.** The term "Directors" shall mean the duly appointed or elected persons comprising the Board.

1.18 **Zone.** The term "Zone" shall mean any area in the Project consisting of at least 7.5 contiguous acres of land. The area designated herein as a Zone shall remain such even though the zoning or use classification of part or all of the Zone may change from that assumed by the Business Park Master Plan.

The boundary line between two or more adjacent Zones may be modified by a recorded document that is executed by all of the Owners owning land contiguous to the old and/or new boundary line in question as well as by the Members for the Zones whose boundaries are being modified. That boundary line adjustment must also comply with all applicable Governing Laws and Governing Documents. Any modification to a boundary of a Zone that satisfies the foregoing requirements shall be effective without the need for any further consents, approvals or amendments to the Governing Documents or documents related thereto. The foregoing provisions may not be used to delete land from one Zone unless that same land is added to another Zone.

II.

NATURE AND PURPOSE OF COVENANTS

The covenants, conditions and restrictions set forth in this Declaration are imposed upon the Parties and Project. Such covenants, conditions and restrictions shall be a burden upon and a benefit to not only each original Party, but also that Party's successors and assigns having any interest in the Project. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within the Project, each Party hereby binds itself and its heirs, personal representatives, successors, transferee and assigns, to all of the provisions restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Party by so doing thereby acknowledges that all the restrictions, conditions,

covenants, rules and regulations contained herein shall run with the land and be binding on all future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by and against the various subsequent and future Parties.

III.

COVENANTS

3.1 Member Association. The Association shall constitute an "Owner Association" as contemplated in the original Governing Documents and a "Member Association" as contemplated in the Master Declaration.

3.2 Governing Documents and Laws. Each portion of the Project shall be used subject to and in compliance with all Governing Documents and Governing Laws. The Association shall have the right, but not the obligation, to take reasonable actions, including the imposition of assessments, to ensure that each portion of the Project shall be used subject to and in compliance with all Governing Documents and Governing Laws. Notwithstanding anything herein to the contrary, the Association may only levy assessments against the Owners responsible for complying with the Governing Documents. If no Owner is responsible for that compliance, the Association may not levy any such assessments.

IV.

MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Membership in the Association shall be held by the Members.

4.2 Absence of Member. If, at any time, there is no Member in existence for a particular Zone or other portion of the Project, then (a) the vote, consent or approval that would otherwise be required from that Member need not be obtained; and (b) if a Party seeks to have the Member for that Zone perform some action, that Party is hereby authorized, but not required, to perform that action, but in doing so that Party must behave reasonably.

4.3 Voting Rights. Each Member shall be entitled to one vote for each Zone with respect to which it is a Member. In no event shall more than one vote be cast with respect to any Zone.

4.4 Vote.

A. Majority Vote. Any action by the Association which must have the approval of the Members of the Association before being undertaken, shall require the vote or written assent of a majority of all the Members except as otherwise expressly set forth in this Declaration. If the Member voting results in a tie vote, that impasse may be resolved in any manner agreed upon by the vote or written assent of a majority of all the Members, except as otherwise provided in this Declaration. If the voting results in a tie vote and the method for resolving the impasse also results in a tie vote, then the action in question shall not be deemed approved until it is ultimately approved by the vote or written assent of a majority of all the Members.

B. Unanimous Vote. Notwithstanding anything in this Declaration to the contrary, the following actions must have the unanimous approval of all of the Members before being

undertaken:

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- i. Any imposition of assessments upon the Members (except for Master Association assessments discussed below);
- ii. Any amendments to this Declaration; and/or
- iii. Any other matters where a unanimous vote of the Members is specifically required by this Declaration.

V.

BOARD OF DIRECTORS

5.1 Decisions. Any action by the Association which must have the approval of the Board before being undertaken, shall require the vote or written assent of a majority of all the Directors except as otherwise expressly set forth in this Declaration. Notwithstanding anything in this Declaration to the contrary, the following actions must have the unanimous approval of all of the Directors before being undertaken:

- i. Any imposition of assessments upon the Members (except for Master Association assessment discussed below);
- ii. Any amendments to this Declaration; and/or
- iii. Any other matters where a unanimous vote of the Directors is specifically required by this Declaration.

VI.

ASSESSMENTS

6.1 Covenant to Pay Assessment. The Owners shall pay to the Association regular, special, emergency, reimbursement and other assessments as authorized by the Board. Each assessment against an Owner, together with late charges, interest, costs and reasonable attorneys' fees, shall be a lien against the area of a Zone owned by such Owner and shall also be the personal obligation of that Owner and shall run with the land and be binding upon that Owner's successors in title unless extinguished by a Senior Mortgage as discussed below.

6.2 Determination of Assessments. The amount and time of payment of the assessments against the Zones shall be determined by the Board. The Board may also levy assessments against only a Zone or portion of a Zone in order to compensate the Association for damages incurred by the Association as a result of the breach of this Declaration by the Owner of that area. All property in the Project dedicated to and accepted by any public authority shall be exempt from the assessments created in this Declaration.

Assessments levied against the Zones shall be apportioned to the separately owned areas within the Zones according to the ratio of number of acres in each separately owned area to the total number of acres of all the land in the Zones subject to assessments. In the case of an area in which two or more Owners hold fractional interests, each Owner shall be separately assessed and

shall be deemed to own the number of acres that results when the acreage of the area is multiplied by the Owner's fractional interest.

6.3 Master Association Assessments. Notwithstanding any provisions in this Declaration to the contrary, in the event that the Master Association imposes any assessments upon the Association or the Project, those Master Association assessments shall be promptly and automatically paid to the Master Association and further assessed to each of the Owners in the manner contemplated herein relative to Association assessments without the need for any vote, approval, or consent of the Members or Directors.

6.4 Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner shall pay to the Association the amount assessed against the land owned by such Owner. In addition, a late charge of 10 percent shall be assessed on any assessment not paid within 15 days after the date on which it becomes due. Any assessment, including late charges and previously accrued interest associated therewith, that is not paid within 30 days after the assessment becomes due shall thereafter bear interest at an annual percentage rate of 18 percent or the highest rate allowed by law, whichever is less. In the event attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the delinquent Owner shall pay actual attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit. The Association may commence and maintain a suit at law against any other defaulting Party obligated to pay assessments for such delinquent assessments as to which that defaulting Party is personally obligated. Such suit shall be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with late charges and interest thereon as provided for herein, costs of collection, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Party. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien discussed below.

B. Enforcement by Lien.

iii. Grant of Lien. There is hereby created a lien on each and every portion of the land in each Zone to secure payment to the Association of any and all assessments levied against that portion of each Zone pursuant to this Declaration, together with late charges, interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including actual attorneys' fees.

iv. Exercise of Lien Rights. At any time after the occurrence of any delinquency in the payment of any such assessment, the Board may make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within 10 days after delivery of such demand, the Board or its duly authorized representative may thereafter file and record a claim

of lien on behalf of the Association in the Office of the County Recorder of the County, against all or any portion of the land with respect to which the delinquency exists. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (1) The name of the Owner;
- (2) The legal description of the land in the Zone against which the claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, late charges and interest thereon, collection costs, and estimated attorneys' fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration; and
- (5) That a lien is claimed against the described land in the Zone in an amount equal to the amount stated, together with all other amounts thereafter becoming due from the Owner from time to time in accordance with this Declaration.

Upon recordation of a duly executed original or copy of a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the area against which such assessment was levied.

v. Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in a court or in the manner provided under the Governing Laws. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any foreclosed land area. In connection with such action, Association shall be allowed to recover reasonable attorneys' fees, court costs, title search fees, late charges, interest and all other costs and expenses to the extent permitted by the Governing Laws. Upon the timely curing of any default for which a notice of claim of lien was filed by the Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Board shall cause an officer of the Association to file and record an appropriate release of such claim of lien in the office of the Recorder of the County. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of the land owned by such Owner. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a claim of lien, whether judicially, by power of sale, or otherwise, until the expiration of 10 days after a copy of said claim of lien, showing the date of recordation thereof, has been mailed to the Owner owning the land described in such claim of lien.

vi. Lien Priority. Such a lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration, except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental assessing unit; (c) Senior Mortgages; (d) utility easements; (e) the Governing Documents; and (f) arms-length leases, whether or not recorded.

6.5 Effect of a Sale or Transfer on Assessments. The sale or transfer of any portion of a Zone shall not affect any assessment lien created pursuant to the term of this Declaration to secure assessments becoming due whether prior to, on, or after the date of such sale or transfer, nor shall

such sale or transfer diminish or defeat the personal obligation of any Party for delinquent assessments; provided, however, that the sale or transfer of land in a Zone pursuant to a judicial foreclosure or foreclosure by power of sale of a Senior Mortgage, or by a transfer in lieu of foreclosure of a Senior Mortgage, shall extinguish any assessment lien which has attached and become effective with regard to the land being so transferred prior to the time of such sale or transfer, and shall prohibit the recordation of any assessment lien against such land on account of assessments which became due prior to the date of such sale or transfer; provided, however, that there shall be a lien on the interests of the purchaser at such sale or transfer which shall attach, be created and become effective and may be foreclosed in accordance with this Declaration and which shall secure all assessments becoming due after the date of any such sale or transfer. In the event that all or any portion of an assessment against any land is extinguished, the Directors shall have the right by unanimous vote, but not the obligation, to proportionately reallocate all or any portion of that extinguished assessment among the other portions of the Zones. For the purpose of this Section, a sale or transfer of land in a Zone shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the area in question. Notwithstanding the extinguishment of any assessment lien by a Senior Mortgage, that extinguishment shall not relieve the Party originally responsible for the delinquent assessment secured by that lien from the obligation to pay that delinquent assessment to the Association. The Association shall execute and deliver a separate subordination agreement (consistent with this Declaration) requested by any lender that holds a Senior Mortgage.

6.6 Delivery of Statement. Upon written request, the Association shall, within 10 days of receipt of such request, provide an Owner with a copy of this Declaration and copies of the Bylaws and Articles, together with a true statement in writing as to the status of assessments against the land area owned by the requesting Owner. The Board may impose a reasonable fee for providing such documents and statement. Purchasers, successors, assigns and mortgagees of an Owner shall be entitled to rely upon such a statement issued by the Association.

VII.

DEFAULTS AND REMEDIES

7.1 Default. An "Event of Default" shall occur under this Declaration if any Party fails to perform its obligations under this Declaration and/or any of the other Governing Documents where those obligations are due and the defaulting Party has not performed the delinquent obligations within 30 days following delivery to the delinquent Party of written notice of such delinquency (the "Notice of Default") unless a longer period is allowed under the Governing Document in question. Notwithstanding the foregoing, if the default cannot be reasonably cured within that 30-day period, a Party shall not be in default so long as that Party commences to cure the default within that 30-day period and diligently continues such cure in good faith until complete.

7.2 Notice. An aggrieved or complaining Party shall be required to give a Notice of Default to the following: (a) the specific Party that is in default; (b) the Member for the Zone in which the default occurs; (c) any person or entity that prior to the giving of the Notice of Default has delivered to the Party giving such Notice a written request that a copy of a Notice of Default such as the one being given be furnished to the requesting person or entity; (d) the Owner(s) of record of any land on or with respect to which the default occurs; and (e) any person or entity that may be entitled to receive such Notice pursuant to the specific Governing Document under which the default in question has occurred. Except as expressly stated above, no other person or entity shall be entitled to receive any Notice of Default under this Declaration.

7.3 Remedies. Upon the occurrence of an Event of Default, any non-defaulting Party shall have the right to exercise all rights and remedies available under this Declaration, the Governing Documents, at law and in equity, including injunctive relief and specific performance. Notwithstanding the foregoing, only the Association shall have the right to impose assessments and liens as remedies for Events of Default in accordance with the assessment and lien provisions in this Declaration. The Parties acknowledge that their obligations under this Declaration are unique and defaults may not be compensated by purely monetary damages. Those rights and remedies shall be cumulative. Under no circumstances, even an Event of Default, shall any Party have the right to terminate this Declaration except as otherwise provided in this Declaration.

7.4 Right to Cure. Any person or entity shall be entitled to cure any default under this Declaration. If the Notice of Default is not delivered to any of the Parties required in the Notice provisions above, then before the aggrieved or complaining Party may exercise any rights or remedies against the Party that has not received notice, that non-receiving Party shall be allowed the same amount of time to cure the default in question as that non-receiving Party would have otherwise had if that Notice of Default had been timely delivered to the non-receiving Party. A cure effected by any person or entity shall be accepted by all the Parties as a cure for the default in question. The defaulting Party shall reimburse the curing person or entity for the reasonable and actual costs (including attorneys' fees) of curing a default within 15 days following delivery to the defaulting Party of a written notice of such costs along with reasonable support documentation.

7.5 No Cross-Defaults Among Parties. If any Party shall create an Event of Default hereunder, only the defaulting Party and the land in the Zones owned by that defaulting Party shall be subject to remedies, and none of the other Parties and no other land in the Zones governed by this Declaration shall be deemed to be in default or be penalized in any manner.

7.6 Limitation on Liability. Notwithstanding anything in this Declaration to the contrary, no owner, trustee, officer, employee or agent of any Member and/or of the Association shall have any personal, recourse, deficiency or other liability associated with this Declaration or any portion of the Project. Nothing in this provision shall limit the liability of (a) any person or entity for performance of the obligations that are specifically imposed on that person or entity by the Governing Documents; or (b) any person or entity that has undertaken such liability in writing, as by a written guaranty, indemnification or other promise of responsibility.

7.7 Jurisdiction. In the event that litigation is instituted under this Declaration, the same may be brought and tried, and the Parties hereby consent to jurisdiction, in the judicial jurisdiction of the courts of Salt Lake and Davis County.

VIII.

DUTIES AND POWERS OF THE ASSOCIATION AND BOARD

8.1 General Powers of the Association. All powers relating to the management, operation and maintenance of the Association shall be vested in the Association. The Association may do any and all other acts and things that a nonprofit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties as set forth in this Declaration. The Association, through its Board, shall have the authority to delegate its powers to, and/or contract with, committees, officers,

employees, contractors, consultants and/or agents of the Association.

8.2 Association Rules. The Board shall also have the power to adopt, amend, and repeal such Association Rules as are reasonable. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Parties and their successors-in-interest whether or not actually received thereby.

8.3 Entry Onto Project. The Association and its representatives shall have the right to enter upon any area of the Project to the extent such entry is reasonably justified and necessary in connection with the performance by the Association of its duties and responsibilities under this Declaration. The Association shall indemnify the Parties for any liability or damage arising from such entry.

8.4 No Design Guidelines. Neither the Association nor this Declaration shall establish, administer or enforce any design guidelines or any design review authority or procedures for any portion of the Project.

8.5 Insurance. The Board shall obtain and continue in effect the types of insurance that it deems necessary for the Association.

8.6 No Architectural Control. The Association shall have no architectural controls over any portion of the Project. All areas in the Project shall be owned, developed, maintained, operated and conveyed in accordance with applicable Governing Documents and Governing Laws. Nothing in this Declaration shall be deemed to give any person or entity any right under this Declaration to approve or disapprove any development of any portion of the Project. Nevertheless, nothing in this Declaration shall be deemed to prohibit any person or entity from exercising its other rights under applicable Governing Documents and/or Governing Laws.

8.7 Financial Statements. The Association shall prepare budgets and financial statements of a type and at times determined by the Board.

IX.

NOTICES

In each instance in which notice is to be given to a Party, the same shall be in writing and may be delivered personally or by United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the Party at its most recent address known to, or reasonably ascertainable by, the Party giving the notice. Any notice so deposited in the mail within the State of Utah shall be deemed delivered 48 hours after such deposit. Any notice to be given to the Association may be delivered personally to any Director of the Board or sent by the United States mail, certified or registered, postage prepaid, return receipt requested. Any notice so deposited in the mail within the State of Utah shall be deemed delivered 48 hours after such deposit.

X.

RIGHTS OF LENDERS

Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, lenders shall have the following rights:

10.1 **Notice to Institutional Holders of Default.** Any Institutional Holder of any Mortgage on any portion of a Zone shall be entitled to receive from the Association, if such Holder has so requested in writing of the Association, a copy of any Notice of Default issued by the Association to the Owner of the land mortgaged in favor of such Institutional Holder.

10.2 **Assessments on Foreclosure.** Any Institutional Holder of any Senior Mortgage who obtains title to a Zone or portion thereof pursuant to the remedies provided in the Mortgage, by means of a deed in lieu of foreclosure, or through foreclosure of the Senior Mortgage, shall not be liable for any claims for unpaid assessments or charges against such area which accrued prior to the acquisition of title to such area by the Institutional Holder of the Senior Mortgage.

10.3 **Rights of Institutional Holders.** All Institutional Holders of Mortgages on any portion of a Zone shall, upon written request to the Association, be entitled to:

A. Inspect the books and records of the Association during normal business hours;

B. Receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Association; provided however, that such statements shall be made available only if they have been prepared by the Association in the regular course of business; and

C. Receive written notice of all meetings of the Members of the Association and shall be entitled to designate a non-voting representative to attend all such meetings.

10.4 **Priority on Distribution of Proceeds.** No Party shall have priority over any rights of Institutional Holders of Mortgages pursuant to their Mortgages in the case of a distribution to Parties of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Project and/or improvements thereon.

10.5 **Mortgage Protection Clause.** No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

10.6 **Conflicts.** In the event of any conflicts between any of the provisions of this Article and any other provisions of this Declaration, the provisions of this Article shall control.

XI.

EASEMENTS AND PROPERTY RIGHTS

Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth exist superior to all other encumbrances applied against or in favor of any portion of the Project which is the subject of this Declaration.

GENERAL PROVISIONS

12.1 **Indemnification.** To the fullest extent allowed by the Governing Laws, the Association shall indemnify and hold harmless, and the Parties shall release, all Directors and officers of the Association, the Board and their respective committees from any and all liabilities, claims and expenses (including attorneys' fees) associated with the performance of their duties on behalf of the Association, the Board or their respective committees to the extent that the actions or omissions of those individuals are in good faith and without intentional or criminal misconduct or fraud.

12.2 **No Discriminatory Restrictions.** No Party shall execute or cause to be recorded any instrument or take or omit to take any action that imposes a restriction upon the use, sale, lease or occupancy of all or any portion of the Project on the basis of race, sex, sexual preference, marital status, national ancestry, color, religion or age.

12.3 **Severability.** Should any of the covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

12.4 **Term.** Subject to the limitations set forth in this Section, this Declaration and the covenants herein contained shall be in effect in perpetuity. This Declaration may be terminated in the same manner as it may be amended, pursuant to the following Section.

12.5 **Amendments.** Subject to the rights of lenders as set forth in the Article of this Declaration entitled "RIGHTS OF LENDERS," this Declaration may be amended after (a) the affirmative assent or vote of all of the Members and Trustees and the holder of each Senior Mortgage; and (b) the amendment or modification has been executed by the President of the Association, who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of the County. No consent from any individual Owner separate from the consent of the Member for the Zone in which that Owner owns land shall be required to amend this Declaration. A copy of any amendment or modification adopted pursuant to this Section shall be distributed by first-class mail postage prepaid or personal delivery to all of the Members. The undersigned Members hereby agree and acknowledge that this Declaration is hereby approved and adopted by the undersigned Members.

12.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. No rule of strict interpretation shall be applied against any Party.

12.7 **Conflicts.** In case of any conflict between this Declaration and the Articles or Bylaws, this Declaration shall control.

12.8 **Attorneys' Fees.** In the event of any controversy or claim respecting this Declaration, the prevailing Party shall be entitled to be reimbursed by the non-prevailing Party for reasonable expenses (including attorneys' fees) and damages incurred by the prevailing Party.

12.9 Performance. Each Party shall perform its respective obligations under this Declaration in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other Party governed by this Declaration, the development of any portion of the Project or the issuance of certificates of occupancy or other approvals associated therewith.

12.10 No Third-Party Rights. The obligations set forth in this Declaration shall not create any rights in or obligations to any other persons or entities other than as expressly set forth herein.

12.11 Estoppel Certificates. Within 10 days following the Association's receipt from any other Party of a request for an estoppel certificate respecting the status of performance of the requesting Party under this Declaration, the Association shall deliver to the requesting Party a reasonable estoppel certificate respecting such matters. The estoppel certificate contemplated herein shall be addressed to any lenders, purchasers, government agencies or other individuals or entities designated by the requesting Party. The failure to deliver such estoppel certificate shall be presumed to mean that the Association is not aware of any defaults or delinquencies by the requesting Party under this Declaration and is estopped from asserting the same. Except as expressly stated herein, no other person or entity shall be entitled to require and/or obligated to give estoppel certificates under this Declaration. In particular, Members and Owners shall not be entitled to require and/or obligated to give estoppel certificates to each other under this Declaration.

12.12 No Waiver. Any Party's failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in a writing by the Party intended to be benefited by the provisions, and a waiver by a Party of a breach hereunder by another Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

12.13 Time of Essence. Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.

12.14 Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Declaration which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

12.15 Cooperation. The Members and the Association 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 herein.

12.16 No Relationship. Nothing in this Declaration shall be construed to create any partnership, joint venture or fiduciary relationship among the Parties.

12.17 Representations and Warranties. The Parties hereby individually represent and warrant to each other that the statements below are true and complete as to the representing Party as of the date that the representing Party became subject to this Declaration. Each Party understands that the other Parties are relying upon the truthfulness and completeness of the statements below in entering into this Declaration:

A. **Organization.** The Party is duly organized, validly existing and in good standing under the laws of the state of its organization, with full power and authority to carry out its business in all other states in which it may do business.

B. **Authority.** The Party has full authority to enter into and be subject to this Declaration and to perform all of its obligations hereunder. The individuals executing documents binding the Party do so with the full authority of the Party that those individuals represent.

C. **Enforceability.** This Declaration has been duly authorized and approved by the Party and constitutes the legal, valid and binding obligation of the Party enforceable in accordance with its terms.

D. **Approvals.** No registration with, or consent or approval of, or notice to, or other action by, any person or entity to this Declaration is required to make this Declaration enforceable against the Party.

E. **No Default.** The Party is not in default under any contract that would adversely impact the Party's ability to perform under this Declaration. The Party is not subject to any pending or threatened litigation, judgment, order or other proceeding which do at present or could in the future materially and adversely affect the ability of the Party to perform its obligations under this Declaration.

F. **Capacity.** The Party shall perform its obligations under this Declaration in a competent manner consistent with that customarily required of successful entities in comparable industries.

G. **Documents.** All of the statements, records, plans and other documents that the Party has submitted to the other Parties in connection with this Declaration are true, correct, complete and not misleading.

12.18 **Consents and Approvals.** Except as expressly stated in this Declaration, the consent, approval, permit, license or other authorization of the Parties shall not be unreasonably withheld, conditioned or delayed. No consent, approval or authorization, or the absence thereof, by a Party shall make that Party liable in any manner for the matter subject to that consent, approval or authorization or the consequences thereof.

12.19 **Exhibits.** All Exhibits attached hereto are hereby made a part hereof and incorporated herein.

12.20 **Recitals.** The recitals are incorporated into this Declaration.

12.21 **Counterparts.** This Declaration 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. This Declaration shall be effective and enforceable against the Parties even if the subordination provisions below are not signed by all the mortgagees and trustees contemplated herein.

12.22 **Priority and Subordination.** The Parties understand that there are already many ownership and security interests recorded against various portions of the Project and that it would be

extremely expensive and time consuming to obtain the agreement and subordination of all those existing owners and lien holders to this Declaration. Consequently, this Declaration shall be recorded against the Project senior to all ownership interests, future liens (other than liens of non-delinquent taxes and assessments) and/or trust deeds encumbering the Project. The Association and each Member shall promptly take all actions and pay all costs necessary to have any future liens (other than liens of non-delinquent taxes and assessments) and/or trust deeds on areas of the Project subordinated to this Declaration. Subject to the rights of the holders of Senior Mortgages herein, all future owners, lenders, lien holders and trust deed holders of any type holding liens or encumbrances on any portion of the Project hereby agree (a) that such liens or encumbrances shall automatically be subordinate to this Declaration and all future amendments thereto, 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 the Association to confirm that subordination.

12.23 Exemption.

12.23.1 Notwithstanding any provision in this Declaration, the Corporation's Articles of Incorporation, the Corporation's Bylaws, the Governing Documents, or any other documents or instruments associated with the Project and/or the Association to the contrary, Declarant shall have the unconditional, irrevocable, and unilateral right (without the need for any consent of the Association, the Senior Lenders, and/or their respective Members, owners, trustees, Directors, officers and/or agents [the "Affected Parties"]) to take all actions and execute all documents that Declarant deems necessary in its sole discretion to directly or indirectly protect and/or promote Declarant's interests in all or any portion of the Project or other land in the Farmington Preserve Project in which Declarant has any direct or indirect interest at the time of the action or execution of documents in question (the "Declarant Farmington Preserve Property"). Any such action and/or execution of documents by Declarant as contemplated in this Section shall be deemed approved by and binding upon the Project and the Affected Parties. The Affected Parties shall promptly take any and all actions and execute any and all documents respecting the Project, the Association, and/or the Declarant Farmington Preserve Property requested by Declarant. The Affected Parties shall not take any actions and/or execute any documents respecting the Project, the Association, and/or the Declarant Farmington Preserve Property without the prior written consent of Declarant which consent may be given or withheld in Declarant's sole discretion. The Affected Parties shall not take or omit to take any actions contrary to this Section 12.23.

Notwithstanding any provision herein to the contrary, Declarant shall not have the right to do any of the following without the prior written consent of all of the Members, which consent shall not be unreasonably withheld, conditioned or delayed: (a) impose any assessments upon any Members; (b) amend this Declaration or other documents of the Association to alter the election, appointment, or voting rights associated with the Members or Directors; or (c) modify Section 8.6 of this Declaration.

12.23.2 The Affected Parties hereby automatically subject and subordinate their interests and agreements associated with the Project and/or the Association to any actions or documents executed by Declarant in accordance with this Section 12.23. Within 10 days following delivery by Declarant of a written request to the Affected Parties, those Parties shall execute (with notary acknowledgement if required by Declarant) and deliver, any further written evidence of that subordination or any other matter required by Declarant under this Section 12.23.

12.23.3 The Affected Parties' obligations under this Section 12.23 shall automatically run with the land in the Project and be binding upon their respective successors and assigns.

Declarant's rights and interests under this Section shall only run with the land in the Declarant Farmington Preserve Property to the extent expressly and specifically so conveyed by Declarant in a writing recorded against the land in question. So long as Declarant directly or indirectly owns any interest in all or any portion of the Declarant Farmington Preserve Property, Declarant shall also have the right to expressly assign all or any portion of Declarant's rights and/or obligations under this Declaration to any person or entity whether or not that assignee has any interest in the Property. Declarant shall record a copy of that assignment or a memorandum thereof against the Property and that document shall be deemed to have the same priority as this Declaration.

12.23.4 So long as Declarant directly or indirectly owns any interest in all or any portion of the Declarant Farmington Preserve Property, this Section 12.23 may not be directly or indirectly amended or terminated at any time without the prior written consent of Declarant which may be given or withheld in Declarant's sole discretion.

12.23.5 This Section 12.23 shall automatically terminate and be of no further force or effect as of the date that Declarant no longer directly or indirectly owns any interest in all or any portion of the Declarant Farmington Preserve Property. Promptly following Declarant's receipt of any confirmation of that termination, Declarant shall deliver that written confirmation to the requesting party so long as Declarant, in Declarant's sole discretion, determines that Declarant no longer directly or indirectly owns any interest in all or any portion of the Declarant Farmington Preserve Property. The requesting party shall promptly pay or reimburse Declarant for all costs, including attorneys' fees, incurred by Declarant in connection with reviewing any request for such confirmation and in rendering such confirmation in accordance with the provisions of this Section 12.23.

12.23.6 The Association shall indemnify, defend and hold harmless Declarant and its owners, directors, officers, employees, and agents from and against any liabilities, claims, and/or expenses, including legal costs, directly or indirectly incurred by the indemnified parties in connection with this Section 12.23.

12.23.7 In the event that there is any tie in voting or deadlock in decision among the Members, trustees, and/or officers of the Association, Declarant shall have the right, but not the obligation, to cast the tie-breaking vote.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BUSINESS PARK ZONE OWNER ASSOCIATION**

LEGAL DESCRIPTION OF BUSINESS PARK ZONE

E 2009473 B 3600 P 668

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.

Less and except the following:

08-051-0154
08-053-0089

BEG AT A PT, WH IS S 00°12'06" E 1482.87 FT ALG THE SEC LN AND S 88°52'42" E 347.61 FT AND N 72°22'00" E 679.30 FT AND S 48°37'29" E 180.58 FT FR THE NW COR SEC 13-T3N-R1 W, SLM; RUN TH S 48°37'29" E 80.53 FT ALG THE E'LY BDY LN OF PPTY CONV IN 2865-740; TH S 21°15'52" E 805.21 FT; TH CONT ALG SD BDY LN S 14°34'30" W 69.70 FT; TH DEPARTING FROM SD BDY LN N 24°03'54" W 375.93 FT; TH N 18°59'18" W 558.19 FT TO THE POB. CONT. 0.990 ACRES. LESS AND EXCEPTING: BEG AT A PT WH IS S 00°12'06" E 1482.87 FT ALG THE SEC LN AND S 88°52'42" E 347.61 FT AND N 72°22'00" E 679.30 FT AND S 48°37'29" E 261.11 FT AND S 21°15'52" E 392.47 FT FR THE NW COR OF SEC 13-T3N-R1 W, SLM; RUN TH S 21°15'52" E 120.12 FT; TH S 69°40'41" W 57.94 FT; TH N 24°03'54" W 25.44 FT; TH N 18°59'18" W 95.99 FT; TH N 70°57'32" E 55.41 FT TO THE POB. CONT 0.160 AC. TOTAL ACREAGE: 0.830 AC.

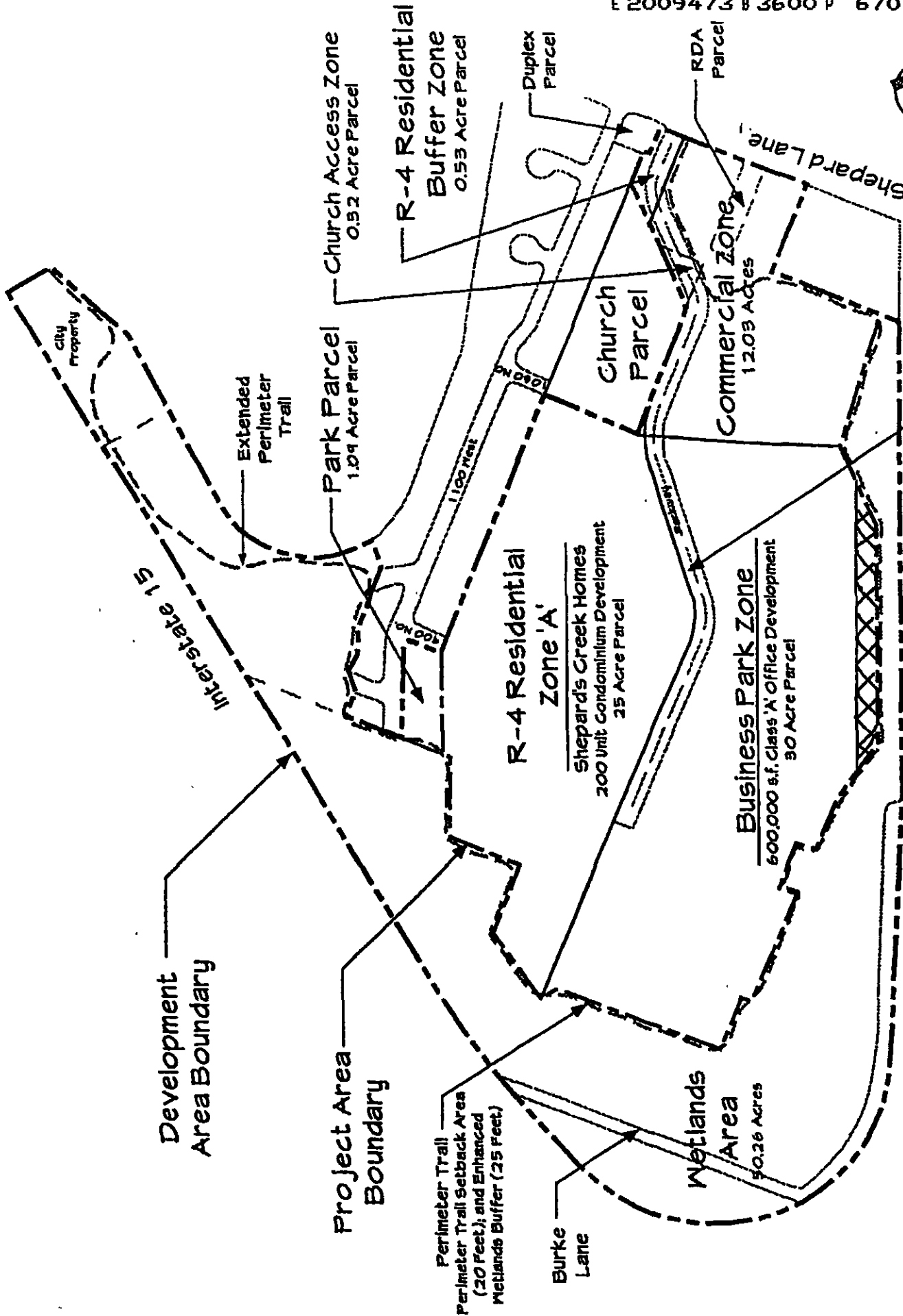
E 2009473 B 3600 P 669

EXHIBIT "B"

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BUSINESS PARK ZONE OWNER ASSOCIATION**

BUSINESS PARK MASTER PLAN

E 2009473 B 3600 P 670



North
September 21, 1996

Highway 89
Parkway
3.81 Acres

Development Area Farmington Preserve

The crosshatched area is exaggerated for depiction purposes only and such area is more specifically described in the legal description on the following page hereto. These lands are to be excluded from the Business Park Zone.

E 2009473 B 3600 P 671

BEG AT A PT, WH IS S 00°12'06" E 1482.87 FT ALG THE SEC LN AND S 88°52'42" E 347.61 FT AND N 72°22'00" E 679.30 FT AND S 48°37'29" E 180.58 FT FR THE NW COR SEC 13-T3N-R1W, SLM; RUN TH S 48°37'29" E 80.53 FT ALG THE E'LY BDY LN OF PPTY CONV IN 2865-740; TH S 21°15'52" E 805.21 FT; TH CONT ALG SD BDY LN S 14°34'30" W 69.70 FT; TH DEPARTING FROM SD BDY LN N 24°03'54" W 375.93 FT; TH N 18°59'18" W 558.19 FT TO THE POB. CONT. 0.990 ACRES. LESS AND EXCEPTING: BEG AT A PT WH IS S 00°12'06" E 1482.87 FT ALG THE SEC LN AND S 88°52'42" E 347.61 FT AND N 72°22'00" E 679.30 FT AND S 48°37'29" E 261.11 FT AND S 21°15'52" E 392.47 FT FR THE NW COR OF SEC 13-T3N-R1W, SLM; RUN TH S 21°15'52" E 120.12 FT; TH S 69°40'41" W 57.94 FT; TH N 24°03'54" W 25.44 FT; TH N 18°59'18" W 95.99 FT; TH N 70°57'32" E 55.41 FT TO THE POB. CONT 0.160 AC. TOTAL ACREAGE: 0.830 AC.

-RECORDER'S MEMO-
LEGIBILITY OF TYPING OR PRINTING
UNSATISFACTORY IN THE DOCUMENT
WHEN RECEIVED

EXHIBIT "C"

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BUSINESS PARK ZONE OWNER ASSOCIATION**

LEGAL DESCRIPTION OF KIRKHAM PARCEL

Kirkham Parcel 2009473 B 3600 P 673
(Prepared 7/27/04)

A parcel of land located in the West Half of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah described as follows:

BEGINNING at a point on the north line of the grantors property, said point being South 00°12'06" East 2630.30 feet along the section line and East 1418.96 feet from the Davis County brass cap marking the Northwest Corner of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being South 00°12'06" East 2642.96 feet from said found Davis County brass cap marking the Northwest Corner of Section 13 to the found Davis County rebar & cap marking the West Quarter Corner of said Section 13) and running thence South 01°07'29" West 165.07 feet to the south line of the grantors property; thence along said south line North 89°58'33" West 68.37 feet to the west line of the grantors property; thence along the boundary line of the Excel Legacy Corporation property as recorded in Book 2865 at Page 740 of the Davis County records the following three courses: North 89°41'44" West 81.63 feet, North 00°39'18" East 151.40 feet, and South 89°58'33" East 82.94 feet to said west line of the grantors property, thence along said west line North 00°36'19" East 13.87 feet; thence along said north line South 89°27'31" East 68.42 feet to the POINT OF BEGINNING.

Containing 23,774 square feet or 0.546 acres.

08-053-0009

08-051-0141