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DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION of covenants, conditions and restrictions (the "Declaration") is made by Shadow Point LLC, a Utah limited liability company, hereinafter referred to as "Declarant".

Declarant as Owner of the Development hereby declares, for the purpose of protecting the value and desirability of the Development, that all of the Parcels shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Parcels, and be binding on all parties having any right, title or interest in the Parcels or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof as follows:

1. Definitions. As used in this Declaration, each of the following terms shall have the meaning indicated:

1.1. "Buildings" means all buildings located in the Development at any time which are intended for permanent use or occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and all areas used exclusively by the occupants of such buildings, including, without limitation, drive through areas, trash enclosures, playgrounds and platforms, ramps, docks and signage affixed to the outside of such buildings. "Building" means any of the Buildings.

1.2. "Common Area" means the Landscaping, Vehicular and Pedestrian Areas and all other parts of the Development, except for those parts on which Buildings are constructed or located on or after the date of this Declaration. All portions of the Common Area shall be improved, developed and maintained in accordance with Paragraph 2 by the Owner of the Parcel on which such portions are located.

1.3. "Common Utility Facilities" means all pipes, lines, wires, conduits and related facilities and improvements for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water that are intended, designed or used for the benefit of more than one Building. The Common Utility Facilities shall be used for the purposes set forth in Paragraph 3.2.

1.4. "Development" means and includes the Parcels as set forth in Paragraph 1.13 and any real property defined as an additional part of the Development in any amendment to this Declaration executed and recorded pursuant to Paragraph 11, together with all Improvements located on the Parcels or such additional real property.

1.5. "Development Guidelines" means the standards, requirements and restrictions which may be adopted from time to time by the Manager pursuant to Paragraph 2.5.

1.6. "Improvements" means all Buildings, Common Utility Facilities, Landscaping, parking areas, roads, driveways, walkways, curbs, gutters, medians, flower boxes, sidewalks, trails, exterior lighting, fences, walls, signs, utility systems and facilities and other improvements located on the realty concerned. "Improvement" means any of the Improvements.

1.7. "Landscaping" means all outdoor areas in the Development landscaped with lawn, flowers, ground cover, shrubbery, trees, ponds, fountains, gardens or similar improvements.

1.8. "Manager" means Shadow Point, until the date (if ever) on which Shadow Point transfers all of its interest as an Owner in all portions of the Development, on which date the Manager shall automatically become and remain another Owner designated in a writing executed and recorded by Shadow Point and such other Owner. For the period during which the Manager is an Owner other than Shadow Point, the rights and duties of the Manager under this Declaration shall be an appurtenance to the Parcel owned by such Owner and shall run with such Parcel.

1.9. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

1.10. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.11. "Official Records" means the official records of the Davis County, Utah Recorder.

1.12. "Owner" means the fee owner of record in the Official Records of the Parcel concerned. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.13. "Parcels" means the parcels of land located in Syracuse City, Davis County, Utah, all being apart of the Desertscape Subdivision as recorded in Book 4314 and page 210 of the Davis County Official Records, described as follows:

PARCEL 1 ("Lot 1"): Lot 1 of Desertscape Subdivision, Tax serial # 12-691-0001

Declarant is the Owner of Lot 1 as of the date this Declaration is recorded in the Official Records.

PARCEL 2 ("Lot 2"): Lot 2 of Desertscape Subdivision, Tax serial # 12-691-0002

Declarant is the Owner of Lot 2 as of the date this Declaration is recorded in the Official Records.

PARCEL 3 ("Lot 3"): Lot 3 of Desertscape Subdivision, Tax serial # 12-691-0003

Declarant is the Owner of Lot 3 as of the date this Declaration is recorded in the Official Records.

PARCEL 4 ("Lot 4"): Lot 4 of Desertscape Subdivision, Tax serial # 12-691-0004

Declarant is the Owner of Lot 4 as of the date this Declaration is recorded in the Official Records.

PARCEL 5 ("Lot 5"): Lot 5 of Desertscape Subdivision, Tax serial # 12-691-0005

Declarant is the Owner of Lot 5 as of the date this Declaration is recorded in the Official Records.

PARCEL 6 ("Lot 6"): Lot 6 of Desertscape Subdivision, Tax serial # 12-691-0006

Declarant is the Owner of Parcel 6 as of the date this Declaration is recorded in the Official Records.

PARCEL 7 ("Lot 7"): Lot 7 of Desertscape Subdivision, Tax serial # 12-691-0007

Declarant is the Owner of Parcel 7 as of the date this Declaration is recorded in the Official Records.

together with all Improvements on such land, and any real property defined as an additional Parcel or as an additional part of any Parcel in an amendment to this Declaration executed and recorded pursuant to Paragraph 11. "Parcel" means any of the Parcels.

1.14. "Qualified Mortgagee" means a Mortgagee of which Manager and each Owner has been given written notice, including such Mortgagee's name and address.

1.15. "Taxes" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public authority on or against the realty concerned.

1.16. "Vehicular and Pedestrian Areas" means all areas located in the Development at the time concerned that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways, sidewalks and trails, but excluding any platforms, ramps and docks comprising a portion of the exterior of any Buildings.

2. Improvements.

2.1. Manager Approval. No excavation, grading or similar work in the Development shall be commenced, no Improvement in the Development shall be constructed or installed, and no alteration, refurbishing or repainting of the exterior of any Improvement shall be performed, unless and until complete plans (including, without limitation, exterior elevations and exterior building materials, colors and signage) have first been submitted to, and approved in writing by, the Manager, such approval not to be unreasonably withheld. The Manager may (but is not obligated to) use a committee approach for such review. Such plan submission and approval requirements shall not apply to repairs or alterations of pre-existing Improvements which do not (a) affect the size or the external design or appearance, (b) change the permitted use, (c) change the then-existing parking ratio, or (d) change the paint or color scheme on any buildings. In determining whether to approve or disapprove plans submitted, the Manager shall use its reasonable, good faith judgment to assure that all Improvements are of good quality and sound construction, functionally harmonize with existing surroundings and Improvements and comply with the other requirements of this Declaration and the Development Guidelines. The Manager may, however, approve plans which entail a variance from such requirements so long as in the reasonable judgment of the Manager such variance is necessary or appropriate. The fact that Improvements comply with applicable zoning and other laws shall not necessarily mean that such Improvements will be permissible under this Declaration. Any plans submitted to the Manager shall be approved or disapproved by the Manager in writing within thirty (30) days after submission. If the Manager fails to take any action within such period, the Manager shall be deemed to have approved the material submitted; provided, however, that to the extent that such material contemplates a variance from the requirements of this Declaration or of the Development Guidelines, the failure of the Manager to timely take action shall be deemed a disapproval of such material. Any disapproval of such material by the Manager shall be in writing and shall be accompanied by a reasonably detailed explanation for such disapproval. Review or approval by the Manager of any plans shall be solely for its own benefit, and shall not be deemed to be or to result in any warranty, representation or conclusion by the Manager relative to the technical adequacy of such plans or the quality, safety, soundness or compliance with applicable law of the Improvements described by such plans. The Manager shall not be liable for damages by reason of any action, inaction, approval or disapproval by the Manager with respect to any request made pursuant to this

Declaration so long as such action, inaction, approval or disapproval did not occur as a result of the Manager's gross negligence or willful misconduct.

2.2. Use. No part of the Development may be occupied for any use which violates any applicable law, ordinance, rule or regulation or which is inconsistent with this Declaration. Buildings shall be used only for commercial purposes, including, without limitation, hotels, financial institutions, offices, retail stores and eating establishments. All Buildings shall be:

(a) first-class buildings designed for hotel, financial institution, office, retail store, eating establishment or other commercial use of the type and quality typically found in first-class, high-quality commercial developments;

(b) architecturally and aesthetically compatible with all other then-existing Buildings or planned and accepted Building;

(c) constructed and operated in such a manner as will preserve the fire insurance rating on any other then-existing Buildings; and

(d) constructed in compliance with all applicable state, county and municipal subdivision, building, zoning, sign and other laws, ordinances, rules and regulations.

2.3. Maintenance. Each Owner shall maintain such Owner's Parcel in good and attractive order, condition and repair, reasonably free of snow and rubbish. No provision of this Declaration shall be construed to mean that any Building cannot be razed or removed at any time or must be restored or reconstructed if damaged or destroyed. However, if an Owner razes or removes any Building, or if any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Parcel on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and sightly condition pending construction of another Building. The Main Entries off of 1700 South and 1000 West as shown on Exhibit A (the "Main Entries") shall be kept in good condition, free of potholes, ruts and significant cracks. The cost of resurfacing or repairing any potholes, ruts, or cracks in the Internal Roadway resulting from normal wear and tear shall be borne on a pro rata basis, based on each respective Parcel's percentage of the total area of the Development, by the Owners of the Parcels and shall be undertaken from time to time as is commercially reasonable and at such time and in such a manner as Manager reasonably believes it to be necessary. . The cost of regular seasonal removal of rubbish and snow from the Main Entries shall be borne by the Owners of the Parcels on a pro-rata basis, based on each respective Parcel's percentage of the total area of the Development. However, no Parcel Owner shall be required to contribute to the cost of regular seasonal removal of rubbish and snow from the Main Entries until such time as the Owner of a Parcel first commences to operate a business on any given Parcel. Until such time as a business first commences to operate on a Parcel, such Parcel shall be excluded from the total area of the Development for purposes of determining the pro-rata percentage cost of seasonal removal of rubbish and snow from the Main Entries . The Manager shall secure

commercially reasonable contracts for the removal of snow and rubbish from the Main Entries .. If any Owner fails to assume its portion of its costs as required under this Paragraph 2.3, the Manager may cover such Owner's portion of the costs and bill the non-paying Owner for such costs in addition to an administrative fee equal to ten (10%) percent of the actual costs incurred. If the non-paying Owner does not pay such bill within thirty (30) days of the receipt thereof then the same shall, in addition to all other rights at law for damages (including reasonable attorneys' fees, court costs and other costs of collection or enforcement), rights in equity for specific performance to enjoin a violation of any provision in this instrument or to enforce any other compliance therewith, or any other rights or remedies available to the party entitled to the payment, any such unpaid amount, together with all reasonable costs of collection, including attorney's fees (including interest on all of the foregoing at the rate of fifteen percent (15%) per annum) shall, upon the recordation of a notice of default, become a continuing lien and charge against the applicable Parcel owned by the non-paying Owner, until paid. In connection therewith, the Manager may serve upon the non-paying Owner, and may record a notice of default reciting the nature of the breach, the legal description of the affected Parcel, the name of the non-paying Owner and the total amounts due. If and when the amounts due are paid, the Manager shall forthwith record an appropriate release of any recorded lien at the sole expense of the non-paying owner. If the amounts due are not timely paid, the Manager entitled to payment may foreclose such lien by a sale conducted pursuant to the applicable sections of Utah law or other statutory provisions applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law.

2.4. Development Guidelines. The Manager may adopt and promulgate (and may from time to time as necessary or appropriate, modify), and shall furnish to any interested party on written request, such Development Guidelines as may be reasonably necessary or appropriate, in the reasonable judgment of the Manager, to amplify or make more detailed any restrictions or requirements contained in this Declaration for Improvements, to advise interested parties of the standards and policies which will be applied in reviewing plans for proposed Improvements and to establish appropriate procedural rules with respect to the submissions of plans for approval.

3. Common Area Easements.

3.1. Access Easement and Parking. Each Parcel shall have appurtenant thereto and be benefited by, and the Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress (but not parking other than as specifically allowed in this Paragraph 3.1) on, over and across those areas designed for such use. The use of such right-of-way and easement shall be limited to general commercial purposes, which shall include reasonable and customary deliveries. Once constructed, no Vehicular and Pedestrian Areas shall be reconfigured so as to eliminate or substantially impair the right-of-way and easement created pursuant to this Paragraph 3.1, unless such reconfiguration is required as a previously established condition for new development or re-development at the Development by a governing municipality, in which case any such cost of reconfiguration to be paid for by the Owners of the Parcels on a pro-rata basis according to the percentage of the total

Development owned by each Owner and completed in a manner so as to satisfy the reconfiguration requirements of the governing municipality while ensuring as nearly as possible, access to each Parcel similar to the access provided to and enjoyed by such Parcel prior to reconfiguration. The costs of such reconfiguration shall also include reasonable costs that are clearly necessary for the reconfiguration of landscaping, curbs, gutters and driveways on any Parcel so as to allow such Parcel to obtain similar access to the reconfigured Vehicular and Pedestrian Access Area as contemplated herein. The Parties to this Agreement acknowledge that from time to time customers of a particular business located on one Parcel at the Development may park at parking areas located in the Vehicular and Pedestrian Areas of an adjacent Parcel. However, the Parties shall use their best efforts to ensure that their respective customers use of an adjacent Parcel's parking shall be incidental and infrequent.

3.2. Utility Easement. Each Parcel shall have appurtenant thereto and be benefited by, and the Common Area shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, any underground Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water) under, through and across the Common Area. Prior to installation, the location of such pipes, lines, wires, conduits and related facilities must be approved by the Manager and the Owner of the Parcel which will be burdened by such right-of-way and easement, such approval not to be unreasonably withheld. If the rights provided for in this Paragraph 3.2 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Owner's sole cost, restore to their previous condition any Improvements which may be damaged as a result of such exercise. Each utility pipe, line, wire, conduit and related facility located in the Development shall be located underground to the extent reasonably possible.

3.3. No Obstruction. Except to the extent approved by the Manager pursuant to Paragraph 2.1, no Owner shall permit to be constructed or placed on any portion of the Common Area any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Development, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that the Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area. Any obstruction or interference permitted under this Paragraph 3.3 shall be done in a manner reasonably calculated to minimize its impact on businesses in the Development.

4. Taxes. Each Owner shall pay, prior to delinquency, all Taxes on such Owner's Parcel, unless the collection of such Taxes and any sale or forfeiture of such Parcel for nonpayment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Parcel is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable to such Parcel shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax parcel assessed, such proportion to be determined by the Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

5. Insurance. Each Owner shall maintain commercial general liability insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Development. Such insurance shall be carried with a responsible company, shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and property damage, and shall name the Manager as an additional insured. With the prior written approval of the Manager, any Owner may comply with the requirements of this Paragraph by (i) purchasing blanket coverage, and electing such deductible provisions as are consistent with good business practices or (ii), electing to self insure, and if so electing, providing the Manager with a written confirmation of such election. Each Owner shall, on request, furnish the Manager with a certificate issued by its insurer evidencing that insurance is in force which complies with the requirements of this Paragraph.

6. Indemnification. Each Owner shall indemnify, defend and hold harmless the Manager and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any part of the Development by (a) the indemnifying Owner, (b) any person leasing or occupying the Parcel owned by the indemnifying Owner, or (c) any agent, employee, contractor, invitee or licensee of either the indemnifying Owner or any person leasing or occupying the Parcel owned by the indemnifying Owner.

7. Prohibited Uses. The following uses are prohibited in the Development:

- 7.1. a manufacturing facility;
- 7.2. a dry cleaners with on-premises cleaning;
- 7.3. a coin-operated laundry;

7.4. a bar, cocktail lounge, pub, tavern, nightclub, comedy club, music or dance hall or disco in which less than fifty percent (50%) of its space is devoted to, or in which less than fifty percent (50%) of its revenue is derived from, food service;

7.5. a church;

7.6. an establishment having nude or semi-nude dancing, entertainment or service providers or any other sexually oriented business;

7.7. a bowling alley;

7.8. a bingo parlor;

7.9. a flea market;

7.10. a massage parlor;

7.11. a funeral home;

7.12. a facility for the sale of paraphernalia for use with illicit drugs;

7.13. a facility for the sale or display of pornographic or sexually explicit material, such as adult theaters or adult bookstores, as determined by community standards for the area in which the Development is located;

7.14. an off-track betting parlor;

7.15. a carnival, amusement park or circus;

7.16. a facility for any use which is illegal;

7.17. an arcade, pinball or computer game room; provided, however, that:

(e) retail facilities in the Development may operate no more than four (4) such electronic games incidental to their primary operations; and

8. Title and Mortgage Protection. Breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any part of the Development, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any part of the Development.

9. Mortgagee Protection.

9.1. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Development shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

9.2. Notices; Right to Cure. Any Owner, on delivering to any other Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such other Owner at the latest address provided to the notifying Owner by such other Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

9.3. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with such Parcel.

9.4. Recognition. On request, the Manager agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Paragraph 9.

9.5. Estoppel. The Manager shall, within fifteen (15) days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificate in favor of the requesting Owner and such other persons as the requesting Owner shall designate setting forth the following:

(a) that, to the knowledge of the Manager, such Owner is not in default under this Declaration or, in the alternative, that such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;

(b) that, to the knowledge of the Manager, this Declaration is in full force and effect and has not been modified or amended, except as may be set forth in such estoppel certificate; and

(c) such other information as the requesting Owner may reasonably request.

The requesting Owner's Mortgagees and purchasers shall be entitled to rely on any estoppel certificate executed by the Manager pursuant to this Paragraph 9.5.

10. Covenants to Run with Land. Each provision of this Declaration shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of the Manager and each Owner and their respective successors and assigns, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Development, and all interests in any part of the Development shall be subject to this Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the Parties or any other person on or after the date of this Declaration shall be subject and subordinate to this Declaration, and this Declaration shall be prior and superior to such interests and rights. By in any way coming to have any interest in or occupying any part of the Development, the person so coming to have such interest or occupying agrees to be bound by this Declaration; provided, however, that no such person shall have any right or liability under this Declaration as an Owner until such person becomes an "Owner," as defined in Paragraph 1, nor shall such person have liability under this Declaration for any acts committed prior to the time such person became an Owner.

11. Amendment.

11.1. Requisite Parties. This Declaration may be amended only by an instrument recorded in the Official Records, executed by the Manager and each Owner, except as follows:

(a) any amendment to this Declaration which expands the Development to include any other real property only needs to be executed by the Manager and shall set forth a metes and bounds description of such other property;

(b) any amendment to this Declaration which divides an existing Parcel into two or more Parcels only needs to be executed by the Manager and the Owner of the Parcel concerned, and shall set forth the metes and bounds descriptions of such new Parcels;

(c) any amendment to this Declaration which changes the descriptions of two or more Parcels only needs to be executed by the Manager and each Owner of such Parcels, and shall set forth the new metes and bounds descriptions of such Parcels; and

(d) any instrument effective as an amendment to this Declaration pursuant to which any Manager assigns its rights and duties under this Declaration to another Owner only needs to be executed by the existing Manager and the new Manager, and shall set forth a metes and bounds description of such new Manager's Parcel.

11.2. No Other Person Required. Unless it is a required party to the amendment concerned under Paragraph 11.1, no other person (including, without limitation, any person holding an interest in or occupying any Parcel, whether as a tenant under a lease or otherwise) needs to execute such amendment in order to make such amendment in all respects effective, valid, binding and enforceable; provided, however, that no amendment to this Declaration shall affect the rights of any Mortgagee holding a Mortgage which constitutes a lien on the realty directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. All requisite parties to an amendment shall not withhold, condition or delay the approval or execution of such amendment in a manner which is unreasonable.

12. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

13. Release On Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any Parcel, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

14. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Development may be owned by the same person from time to time, it being the intention of the Parties to create a common scheme for the development and operation of the Development which will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 17.

15. Force Majeure. The Manager and any Owner or other person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, for so long as (but only for so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of

the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Manager, the Owner or other person prevented or delayed.

16. Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions which are to apply among the Parcels and which are to define and govern the rights and obligations as between those persons interested in a given Parcel, on the one hand, and those persons interested in other Parcels, on the other. Accordingly, this Declaration shall not alter any agreements which allocate rights and obligations of persons having an interest in the same Parcel among such persons or third parties, but such agreements shall not limit the liability or obligation of any person under this Declaration.

17. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which it is recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by each Owner of the Development and the Mortgagee under each Mortgage then affecting the Development.

18. Notices. Any notice or demand to be given by the Manager to any Owner or by any Owner to the Manager or another Owner shall be given in writing by personal service, telecopy (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after telecopying), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner at the address set forth for such Owner in the Official Records or in the taxing records or, if different, at another address provided by such Owner. Any Owner may change the address at which it desires to receive notice on written notice of such change to the Manager and each other Owner. Any notice or demand given under this Declaration shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

19. Interpretation. This Declaration shall inure to the benefit of, and shall be binding on, the Parties and their respective successors and assigns. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition

without invalidating the remainder of such provision or the remaining provisions of this Declaration. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently or successively from time to time. The failure on the part of any person to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

THE DECLARANT has executed this Declaration to be effective as of the date set forth below and hereby declares that (i) the interests in and rights concerning each part of the Development held by or vested in an Owner of any Parcel on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and (ii) the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in this Declaration.

SHADOW POINT:

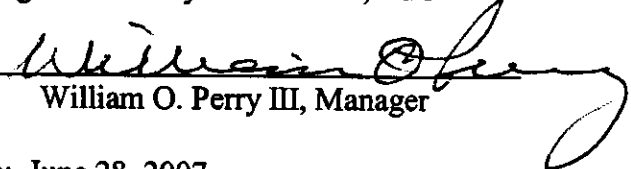
SHADOW POINT LLC,
by its two Managers:

Desertscape Development, LLC

By: 
Jim Talbot, Manager

Date: June 28, 2007

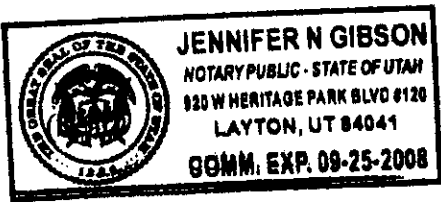
MTS Perry Properties, LLC by its
Manager L.H. Perry Investments, LLC

By: 
William O. Perry III, Manager

Date: June 28, 2007

State of Utah)
) ss.
County of ~~Salt Lake~~ Davis)

The foregoing instrument was acknowledged before me this 29 day of June 2007, 2007, by Jim Talbot as Manager of Desertscape Development, LLC one of the Managers of Shadow Point LLC.



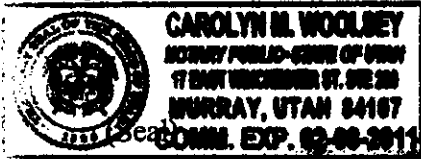

Notary Public

My Commission Expires: 09/25/08

Residing at: DAVIS CO

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 28th day of June, 2007, by William O. Perry III as manager of the manager of MTS Perry Properties, LLC, one of the Managers of Shadow Point LLC.



Carolyn M. Woolsey
Notary Public

My Commission Expires:

02-08-2011

Residing at:

Salt Lake County