

AFTER RECORDING, PLEASE RETURN TO:

Charles L. Maak
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

Tax Serial Nos.: 02-036-0-0002
02-036-0-0005
02-036-0-0027
02-036-0-0030

**DECLARATION OF EASEMENTS
AND COVENANTS**

THIS DECLARATION, dated July 26, 2005, is entered into by HV20MD, L.C., a Utah Limited Liability Company (hereinafter referred to as "HV20MD"), whose address is c/o Robert J. L. Moore, Commerce CRG, 175 East 400 South, Suite 710, Salt Lake City, Utah 84111, and COMMERCE CRG UTAH, LLC, a Utah Limited Liability Company, whose address is Attn: William K. Martin, Jr., 175 East 400 South, Suite 700, Salt Lake City, Utah 84111, ROBERT J. L. MOORE, whose address is 175 East 400 South, Suite 710, Salt Lake City, Utah 84111, and ZENITH HOLDING COMPANY, LTD., a Utah Limited Partnership, whose address is c/o William K. Martin, Jr., Commerce CRG, 175 East 400 South, Suite 700, Salt Lake City, Utah 84111 (the foregoing three parties are hereinafter collectively referred to as the "Pad Owner") [HV20MD and the Pad Owner are hereinafter sometimes collectively referred to as the "Signing Owners"].

RECITALS:

A. HV20MD is currently the Owner of the following-described real property (hereinafter referred to as "Parcel A"), situated in Tooele County, Utah:

BEGINNING at a point North 89°33' West 167.46 feet from the Southeast corner of Lot 1, Block 11, Plat A, Tooele City Survey, Tooele City; and running thence South 89°33' East 47.46 feet; thence North 0°56'50" East 100.00 feet; thence South 89°33' East 120.00 feet; thence North 0°56'50" East 187.10 feet to the Northeast corner of Lot 3, of said Block 11; thence North 89°33' West 333.96 feet to the Northwest corner of said Lot 3; thence South 0°56'50" West 131.46 feet; thence South 89°03'10" East 127.00 feet along a Party wall; thence South 48°10' East 52.24 feet; thence South 0°56'50" West 120.00 feet to the point of BEGINNING.

ALSO, BEGINNING at a point North 0°56'50" East 287.8 feet and North 89°33'00" West 162 feet from the Southeast corner of Block 11, Plat A, Tooele City Survey, Tooele City; and running thence North 0°56'50" East

[NOTE: Any Deed of Trust or other loan-related instrument should be recorded after this Declaration.]


5-31-05

122.92 feet; thence North 89°33' West 171.96 feet to the East line of an alley; thence South 0°56'50" West 122.92 feet along the East line of said alley; thence South 89°33' East 171.96 feet to the point of BEGINNING.

B. The Pad Owner is currently the Owner of the following-described real property (hereinafter referred to as "Parcel B"), situated in Tooele County, Utah:

BEGINNING at a point North 0°56'50" East 287.10 feet from the Southeast corner of Block 11, Plat "A," Tooele City Survey, Tooele City; and running thence North 89°33'00" West 162 feet; thence North 0°56'50" East 122.92 feet; thence South 89°33'00" East 162 feet to the West line of State Highway 36; thence South 0°56'00" West 122.92 feet along the West line of said State Highway to the point of BEGINNING.

Parcels A and B are herein sometimes collectively referred to as the "Parcels," and each or either thereof is herein sometimes referred to merely as a "Parcel." The Parcels are contiguous and, when taken together, comprise a single tract of realty without break or interruption.

C. The Signing Owners wish to facilitate the Parcels being separately owned, conveyed, encumbered, leased, and/or otherwise dealt with and, accordingly, desire that each of the Parcels be burdened and/or benefitted by certain easements, covenants, restrictions, and/or requirements. This Declaration is designed to provide for and create those easements, covenants, restrictions, and/or requirements.

NOW, THEREFORE, for the foregoing purposes the Signing Owners each hereby consents, acknowledges, and agrees to all of the following terms and provisions. With respect to each of the Parcels, the Signing Owners hereby grant such rights and easements, hereby agree to such covenants, restrictions, and requirements, and hereby agree that title to each such Parcel shall be subject and subordinate to the arrangement provided for in this Declaration (as the case may be), as is, are, or may be necessary to effectuate each and all of the terms and provisions set forth below.

1. **Definitions.** In addition to terms defined elsewhere in this Declaration, each of the following terms shall have the indicated meaning:

"Parcel" shall mean and refer to Parcel A or Parcel B, as the context may indicate.

"Shopping Center" shall mean and refer to the tract comprised of both of the Parcels, taken together.

"Site Plan" shall mean and refer to the site plan attached to this Declaration as Exhibit A and incorporated herein by this reference. The Site Plan shows, among other things, each of the Parcels and the Building Area within each Parcel.

"Owner" shall mean and refer to the party which at the time concerned is the owner of record (in the office of the County Recorder of Tooele County, Utah) of a fee or of an undivided fee interest in the Parcel or in any portion of the Parcel concerned (including, without limitation, in the building located on such Parcel). In the event there is more than one Owner of the

Parcel involved at the time concerned, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

"Mortgage" shall mean and refer to both a recorded mortgage and a recorded deed of trust, and **"Mortgagee"** shall mean and refer to both the mortgagee under a recorded mortgage and the beneficiary under a recorded deed of trust.

"Building Area" shall mean: (a) In the case of Parcel A, the area within Parcel A that is currently occupied by a building, as shown on the Site Plan; and (b) In the case of Parcel B, the area within Parcel B encompassed by the "Building Limit Lines" shown on the Site Plan.

"Outdoor Commercial Facility" shall mean and refer to a commercial structure or facility, such as a drive-in or drive-through facility or a gasoline or other fuel-dispensing facility, that is not enclosed or fully enclosed, that is intended to be used or controlled by the Owner or tenant of the Parcel on which such structure or facility is located, and that is not intended for use in common with other Parcel Owners or tenants.

"Common Areas" shall mean: (a) All areas in a Parcel that are not within the Building Area on such Parcel; together with (b) Those portions of the Building Area on such Parcel which at any time are not actually covered by a building or Outdoor Commercial Facility or cannot under the terms of this Declaration be used for a building or Outdoor Commercial Facility; together with (c) Those improvements, located on the areas referred to in the preceding items (a) and (b), which are intended and designed for use as parking areas for vehicles, driveways, sidewalks, and landscaped areas, as the areas and improvements defined and described by the foregoing part of this item (c) may exist or be composed from time to time. Notwithstanding the foregoing, however, in the event the Owner of a Parcel has granted or in the future grants to an occupant of a building (or portion thereof) situated on such Parcel or to another person exclusive use rights respecting an outdoor area within such Parcel, then during the period that such exclusive use rights apply neither the outdoor area to which such rights pertain nor any of the improvements located within such area shall be deemed to be Common Areas, so long as the existence of the exclusive use rights (considering the size and location of the outdoor area involved) does not unreasonably restrict the movement of pedestrian and vehicular traffic and does not result in a violation of any applicable legal requirement.

"Ground Floor Area" shall have reference to the building (but not to any Outdoor Commercial Facility) situated on a Parcel, and shall mean, refer to, and include the number of square feet of area on the ground-floor level or story lying within the exterior faces of the exterior walls of such building.

2. **Building and Outdoor Commercial Facility Location and Size** Each building now or hereafter placed or constructed upon a Parcel shall be located only within the Building Area of such Parcel; provided, however, that canopies and roof overhangs (including columns or pillars supporting them), normal sub-surface footings and foundations, signs affixed to

the building, and doors for ingress and egress may project from a Building Area into the adjacent Common Areas. Any Outdoor Commercial Facility currently located on Parcel A may continue to be located where it now is (even though such Outdoor Commercial Facility may extend beyond the Building Area on Parcel A), but only so long as any portion of the Outdoor Commercial Facility which is outside the Building Area is wholly located within Parcel A. Any Outdoor Commercial Facility that is hereafter constructed or reconfigured on Parcel A or Parcel B may extend beyond the Building Area on the Parcel concerned, but only so long as any portion of such Facility extending beyond the Building Area is wholly located within the Parcel intended to be served by such Facility and does not adversely affect access between the Parcels.

The area shown on the Site Plan as the Building Area for Parcel B is only intended to show where a building may be located, and the entire amount of Building Area so designated for Parcel B is not necessarily to be used for a building. The Ground Floor Area of the building which may actually be constructed and located on Parcel B shall not be in excess of 4,000 square feet.

Each building located on Parcel A or Parcel B shall be limited to one storey in height (plus mezzanine, basement, and rooftop penthouse or vault areas used for mechanical equipment).

In the event a building or Outdoor Commercial Facility is constructed, altered, remodeled, or repaired on a Parcel, the Owner of such Parcel shall cause all of the following to be the case in connection with such construction or alteration: (a) The area where construction is occurring shall be fenced off or otherwise segregated so as not to interfere with the course of business in the remainder of the Shopping Center, and shall be maintained in as neat and dust-free a condition as is reasonably possible; (b) The construction activities involved shall be performed with reasonable diligence, and any ladders, scaffolding, barricades, and the like shall be promptly removed upon completion of the work; (c) If the construction activities damage improvements to the Common Areas, such damage shall be repaired as soon as reasonably possible; (d) The construction activities shall not interfere any more than is reasonably necessary with the normal use of and access over Common Areas located elsewhere than on the Parcel containing the building or Outdoor Commercial Facility that is the subject of the construction; and (e) All construction materials and equipment shall be removed from the Common Areas as soon as reasonably possible following completion of the construction activities.

Any portion(s) of a Building Area on a Parcel that may remain after a building or Outdoor Commercial Facility has been constructed within such Building Area shall be developed and maintained by the Owner of such Parcel as Common Areas, if and to the extent that and for as long as such portion(s) are not used as the site of a building or Outdoor Commercial Facility.

3. Improvement and Use of Common Areas. In conjunction with the construction and completion of any building or Outdoor Commercial Facility situated on a Parcel, the Owner of the Parcel concerned shall (if such has not theretofore been accomplished), at its own expense, install the Common Areas improvements on said Parcel that are contemplated by the Site Plan, that are required to comply with applicable law, or that are reasonably necessary or desirable and that are not inconsistent with the Site Plan or with applicable law. No buildings or structures shall be placed or constructed in the Common Areas except as contemplated by the Site Plan or the foregoing and except for directional signs, paving, bumper guards or curbs, landscape planters,

lighting standards, loading docks, trash enclosures (with all trash being screened from view from the parking areas), other service facilities, and the pylon and monument signs provided for in Section 10 of this Declaration. The Owner of a Parcel may from time to time, at its own expense, alter the Common Areas improvements located on such Parcel, so long as each such alteration is done in compliance with and does not result in any violation of either this Declaration or applicable legal requirements. The Common Areas on each of the Parcels shall be used for vehicular driving and parking, pedestrian traffic, landscaping, and/or related or incidental purposes.

4. **Easement for Access and Parking** Except as otherwise provided in the following sentence, each Parcel shall have appurtenant to it and be benefitted by a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and for vehicular parking on, over, and across such of the Common Areas of the other Parcel as are suitable for such purposes (in view of the nature of the particular Common Areas concerned), as such Common Areas may exist from time to time, and each Parcel shall be subject to and burdened by such nonexclusive easement benefitting the other Parcel.

5. **Prohibition of Barriers**. Except as may be otherwise required by applicable law or as may be reasonably necessary or appropriate during periods that construction activities are ongoing or during periods that improvements may be unsafe or unusable due to damage or destruction, and except for the building and/or Outdoor Commercial Facility which may be constructed on a Parcel, there shall not be constructed or erected within either of the Parcels or on the perimeter of either of the Parcels, any fence, wall, barricade, or other substantial obstruction, whether temporary or permanent in nature, which materially limits or impairs access between the Parcels or the ability to have an unobstructed view of each of the Parcels or the improvements situated thereon. The Owner of each Parcel shall be responsible for ensuring that the provisions of this Section 5 are not violated by any activities occurring or improvements constructed on the Parcel owned by such Owner.

6. **Operation and Maintenance of Common Areas** The Common Areas located within a particular Parcel shall be kept in a reasonably clean, orderly, attractive, and usable condition and in a good state of maintenance and repair by the Owner of that Parcel, at the expense of that Owner. The efforts of the Parcel Owner in this regard shall include, without limitation, the following:

(a) Maintaining the surfaces in a level, smooth, and evenly-covered condition with the type of surfacing material originally installed or such substitute as is in all respects at least equal in quality, use, and durability;

(b) Removing all papers, debris, filth, and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair, and replacing as needed any necessary or appropriate directional signs, markers, and lines; and

(d) Maintaining all landscaped areas (including regular mowing of all grassy areas) and making such replacements of shrubs and other landscaping as is reasonably necessary.

Each Owner shall also, at such time and with such frequency as is reasonable and practical, remove refuse and accumulations of snow from the parking areas and access ways included within the Common Areas of such Owner's Parcel. The Owner of a Parcel may, if it chooses, contract with the Owner of the Parcel (or with any other party) for such other Owner (or other party) to do some or all of the Common Areas work called for by this Section 6, but the ultimate responsibility for the doing of such work shall be and remain that of the Owner of the Parcel on which the Common Areas in question are located.

7. **Maintenance of Buildings and Outdoor Commercial Facilities** The Owner of each Parcel shall be obligated to maintain, at its own expense and in reasonably good and attractive order, condition, and repair, the building (and, if present, any Outdoor Commercial Facility) situated on that Parcel. No provision of this Declaration is intended to mean or shall be construed to mean that any building or Outdoor Commercial Facility on either Parcel cannot be razed or removed at any time or must be restored or reconstructed in the event the same is damaged or destroyed. However, should any such building or Outdoor Commercial Facility be damaged or destroyed, the Owner of the Parcel on which such building or Outdoor Commercial Facility is or was located either (i) shall cause such building or Facility to be restored (with such modifications, consistent with this Declaration, as the Owner may elect to make), or (ii) shall cause whatever remains of such building or Outdoor Commercial Facility to be razed, all debris to be removed, and the site of such building or Outdoor Commercial Facility to be paved and in a level, clean, and slightly condition pending construction of a replacement. The construction required to accomplish the state of affairs described in whichever of the foregoing items (i) and (ii) is to be the case shall be commenced as soon as reasonably possible, and shall be completed, in the case of razing, within 120 days after the date of damage (unless a longer period is needed because of adverse weather conditions) or, in the case of restoration, within 18 months after the date of damage.

8. **Underground Utility Facilities**. Each utility line, connection, installation, or other facility or utility-related facility which is located anywhere within either of the Parcels shall, to the extent reasonably practical, be located underground.

9. **Easement for Underground Utilities and Storm Drainage** Each of the Parcels shall have appurtenant thereto and shall be benefitted by a nonexclusive easement for the laying, installation, operation, servicing, repair, maintenance, removal, and/or replacement of underground utility lines, wires, conduits, and related facilities (including, but not limited to, underground lines, wires, conduits, and facilities for telephone, other communication, electricity, natural gas, other fuels or power sources, sewage, storm drainage, and all types of water) through such portions of the other Parcel as are, at the time concerned, either unimproved (and not planned or intended by the Owner of the Parcel concerned as the site of a building or Outdoor Commercial Facility) or the site of Common Areas and reasonably susceptible of such use. Said portions of each of the Parcels shall be subject to and burdened by such nonexclusive easement benefitting the other Parcel. The lines, wires, conduits, and other facilities that are installed by the Owner of a Parcel on the other Parcel shall be sufficiently strong and shall be buried deep enough so that they can withstand, without damage, surface vehicular traffic of the type reasonably expected on such

other Parcel. In the event the easement rights provided for in this Section 9 are exercised, the Owner of the Parcel intended to be served thereby shall pay or cause to be paid the cost involved and at its sole cost shall restore or cause to be restored to substantially their previous condition any improvements on either of the Parcels which may be damaged as a result of such exercise.

10. **Signs.** Subject to the requirements of applicable law and the governmental authorities having jurisdiction, the Owner of each Parcel shall have the right to erect and maintain within the Common Areas located on its Parcel whatever sign(s) may be permitted by applicable law and governmental authorities. No monument or pylon signs other than those authorized by the foregoing provisions shall be permitted within the Shopping Center. Any sign allowed by the foregoing provisions must comply with applicable zoning and other governmental requirements.

11. **Taxes.** The Owner of each Parcel shall pay or cause to be paid, prior to delinquency, all real property or ad valorem taxes and assessments that are levied against such Parcel or any part thereof.

12. **Shopping Center-Wide Use Restrictions.** Each of the Parcels shall be used only for commercial purposes of the type normally found in a retail shopping center, including, without limitation, financial institutions, service shops, offices, retail stores, and restaurants. No use shall be made of either Parcel which causes or creates a nuisance, is obnoxious, or, in general, distracts from the first-class retail nature of the Shopping Center. Uses which shall not be allowed in the Shopping Center shall include, but not necessarily be limited to, the following: (a) Second hand stores or flea markets; (b) Storage of motor vehicles, boats, or trailers; (c) Automobile repair operations; (d) So-called "head shops" and other similar type uses; (e) Sales of automobiles; (f) Educational facilities; (g) Vocational schools or training classes unrelated to a primary retail use on the Parcel; (h) Manufacturing or assembly facilities; (i) Churches or places of religious congregation; (j) So-called "adult" type bookstores or other facilities; (k) Billiard or pool halls; (l) Cocktail bars or cocktail lounges (but this restriction shall not prohibit the sale of alcoholic beverages, for on-premises consumption, by a restaurant or other food-dispensing facility); and (m) any non-retail uses which cause or contribute to excessive use of the Common Area parking facilities.

13. **Parcel B Use Restrictions.** Each of the following use restrictions shall apply to Parcel B:

(a) So long as Alert Cellular is a tenant of Parcel A, Parcel B shall not be occupied by a business which has the sale of cellular or mobile telephones as its primary purpose.

(b) So long as Caesars Utah, L.L.C. is a tenant of Parcel A, Parcel B shall not be occupied by a facility which sells or offers for sale, on a carry-out, delivery, or sit-down basis, pizza or other Italian-related foods.

(c) So long as Hollywood Entertainment Corporation is a tenant of Parcel A, Parcel B shall not be occupied by a facility which sells, rents, and/or distributes pre-recorded video cassettes, tapes, and disks, entertainment software, video merchandise, or items which are substitutes for, or technological evolutions of, any of the foregoing

items; provided, however, that this restriction shall not prohibit the sale of blank or unrecorded video cassettes or disks or the sale of instructional or promotional video cassettes or disks.

14. **Covenants to Run with Land.** This Declaration and all of the easements, covenants, restrictions, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land, and shall be binding upon and shall inure to the benefit of the Signing Owners, the respective Owners from time to time of the Parcels, any other party which has, acquires, or comes to have any interest in or which occupies or comes to occupy a Parcel, their respective grantees, transferees, tenants, heirs, devisees, personal representatives, successors, and assigns, and the licensees, employees, customers, and invitees of all of the foregoing parties. This Declaration and all of the provisions hereof shall be binding upon each Parcel, and all interests in each Parcel shall be subject to this Declaration and all of such provisions. By acquiring, in any way coming to have any interest in, or occupying a Parcel, the party so acquiring, coming to have such interest, or occupying consents to, and agrees to be bound by, this Declaration and all of the provisions hereof.

15. **Title and Mortgage Protection.** A breach of any of the covenants, restrictions, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, restrictions, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee or trustee interested under any Mortgage affecting a Parcel shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, restrictions, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a properly recorded Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

16. **Default and Enforcement.** The Owner of either Parcel and the Mortgagee interested under any Mortgage which may then affect either Parcel (but no parties other than such Owners and Mortgagees) shall have the right to enforce, through appropriate proceedings at law or in equity, such of the easements, covenants, restrictions, provisions, and requirements of this Declaration as are intended to benefit the Parcel in which such Owner or Mortgagee is interested. In addition, in the event the Owner of either Parcel defaults in performance of any of its obligations under this Declaration, the Owner of the other Parcel shall have the right, upon the expiration of 30 days following written notice of such default given to both the defaulting Owner and the Mortgagee under any properly recorded first-position Mortgage which may then affect the Parcel owned by the defaulting Owner (unless efforts to effect a cure of a non-monetary default have been instituted within said period and are thereafter diligently pursued to completion), to perform in the defaulting Owner's stead and thereafter to be reimbursed by the defaulting Owner, upon demand, for all costs, expenses, and damages expended or incurred by reason of the default, together with interest thereon

at the rate of 10% per annum and reasonable attorneys' fees (including those incurred in connection with any appeal). If any action is brought because of a default under or to enforce or interpret any of the easements, covenants, restrictions, provisions, or requirements of this Declaration, 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.

17. **Amendment**. Any provision contained in this Declaration may be amended by, but only by, an instrument filed for record with the County Recorder of Tooele County, Utah which is executed by the Owner of each Parcel (but no parties interested in any capacity other than as such an Owner). Unless under the foregoing provisions of this Section 17 it is a necessary party to the amendment in question, no party to this Declaration, no other party which has, acquires, or comes to have an interest in any Parcel, and no party which occupies or comes to occupy any Parcel, need execute an amendment to this Declaration in order to make such amendment in all respects effective, enforceable, binding, and valid against all of the parties and interests referred to in Section 14 hereof (subject, however, to the provisions of Section 15).

18. **Contributions from Third Parties**. Nothing in this Declaration shall limit or shall be construed to limit the right of an Owner to require, pursuant to leases, contracts, or other agreements entered into with tenants, contract buyers, or other third parties, contribution from said tenants, contract buyers, or other third parties toward any of the obligations or expenses required to be paid by such Owner under this Declaration.

19. **Release Upon Transfer**. From and after the time an Owner conveys by a properly recorded Deed legal title to the Parcel owned by it or is otherwise divested of legal title to the Parcel owned by it, such Owner shall be relieved of all liabilities and obligations which under this Declaration are imposed upon the Owner of the Parcel concerned (except such liabilities or obligations as may have already accrued but not previously been discharged).

20. **Partial Invalidity**. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any Owner, Mortgagee, other party, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any Owner, Mortgagees, other parties, or circumstances other than those as to which a holding of invalidity is reached shall not be affected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

21. **Non-Merger**. This Declaration and all of the easements, covenants, restrictions, provisions, and requirements hereof shall apply and be in effect and shall at all times continue to exist and apply as regards each Parcel, even though both of the Parcels may be owned or may come to be owned by the same party. The legal doctrine of merger shall not be applied to render inapplicable or ineffective, or no longer applicable or effective, as regards either of the Parcels, either this Declaration or any of the easements, covenants, restrictions, provisions, or requirements hereof.

22. **Counterparts.** This Declaration may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document, with the same effect as if all parties had signed the same signature page. Any signature page of this Declaration may be detached from any counterpart of this Declaration and reattached to any other counterpart hereof.

23. **Effective Dates and Duration.** This Declaration and any amendment hereto shall take effect as of, but not until, the date on which a counterpart of the document concerned is filed for record in the office of the County Recorder of Tooele County, Utah. If such recordation of this Declaration has not occurred on or before January 1, 2006, this Declaration and all of the provisions hereof shall be null and void and of no force or effect whatsoever. This Declaration and all of the provisions hereof (except any provisions hereof which by their terms may cease to be effective at an earlier time) shall remain effective until this Declaration is terminated and extinguished by an instrument, filed for record in the office of the County Recorder of Tooele County, Utah, executed by: (i) All of the parties required by Section 17 to amend this Declaration; and, in addition, (ii) The Mortgagee under each properly recorded Mortgage then affecting any of the Parcels.

24. **Interpretation.** The captions which precede the Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include each other gender. This Declaration shall be governed by and construed in accordance with the laws (excluding the choice-of-laws rules) of the State of Utah.

IN WITNESS WHEREOF, the Signing Owners have executed this Declaration of Easements and Covenants.

[Signature Lines and Acknowledgment Forms Appear on Following Pages]

EXECUTED on this 27 day of July, 2005, by HV20MD, L.C., a Utah Limited Liability Company ("HV20MD").

"HV20MD": HV20MD, L.C., a Utah Limited Liability Company

By [Signature]
Robert J. L. Moore, Member

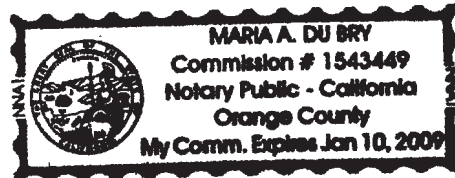
By [Signature]
Ray Unrath, Member

STATE OF CALIFORNIA)
) ss.
COUNTY OF Orange)

On July 27, 2005, before me, Maria A DuBry Notary Public, personally appeared ROBERT J. L. MOORE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same as a Member of HV20MD, L.C., a Utah Limited Liability Company, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Signature

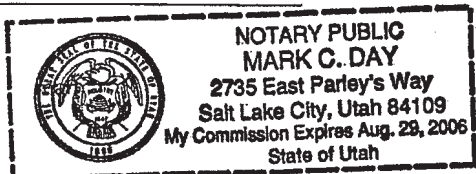


STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing Declaration of Easements and Covenants was acknowledged before me this 20 day of July, 2005, by RAY UNRATH, as a Member of, and on behalf of, HV20MD, L.C., a Utah Limited Liability Company.

My Commission Expires:

[Signature]
Notary Public
Residing at: _____



EXECUTED on this 26 day of July, 2005, by COMMERCE CRG UTAH, LLC, a Utah Limited Liability Company, ROBERT J. L. MOORE, and ZENITH HOLDING COMPANY, LTD., a Utah Limited Partnership (collectively, the "Pad Owner").

"Pad Owner":

COMMERCE CRG UTAH, LLC, a Utah Limited Liability Company

ZENITH HOLDING COMPANY, LTD., a Utah Limited Partnership

By William K. Martin, Jr.
William K. Martin, Jr., Manager

By William K. Martin, Jr.
William K. Martin, Jr., General Partner

Robert J. L. Moore
Robert J. L. Moore, in his Individual Capacity

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

The foregoing Declaration of Easements and Covenants was acknowledged before me this 26th day of July, 2005, by WILLIAM K. MARTIN, JR., as the Manager of, and on behalf of, COMMERCE CRG UTAH, LLC, a Utah Limited Liability Company.

My Commission Expires:

Luane Cutler
Notary Public
Residing at: _____



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

The foregoing Declaration of Easements and Covenants was acknowledged before me this 26th day of July, 2005, by WILLIAM K. MARTIN, JR., as the General Partner of, and on behalf of, ZENITH HOLDING COMPANY, LTD., a Utah Limited Partnership.

My Commission Expires:

Luane Cutler
Notary Public

Residing at: _____



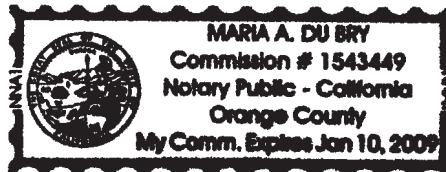
STATE OF CALIFORNIA)
) ss.
COUNTY OF Orange)

On July 27, 2005, before me, Maria A DuBry Notary Public, personally appeared ROBERT J. L. MOORE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his individual capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Maria A DuBry

Signature



50 WEST

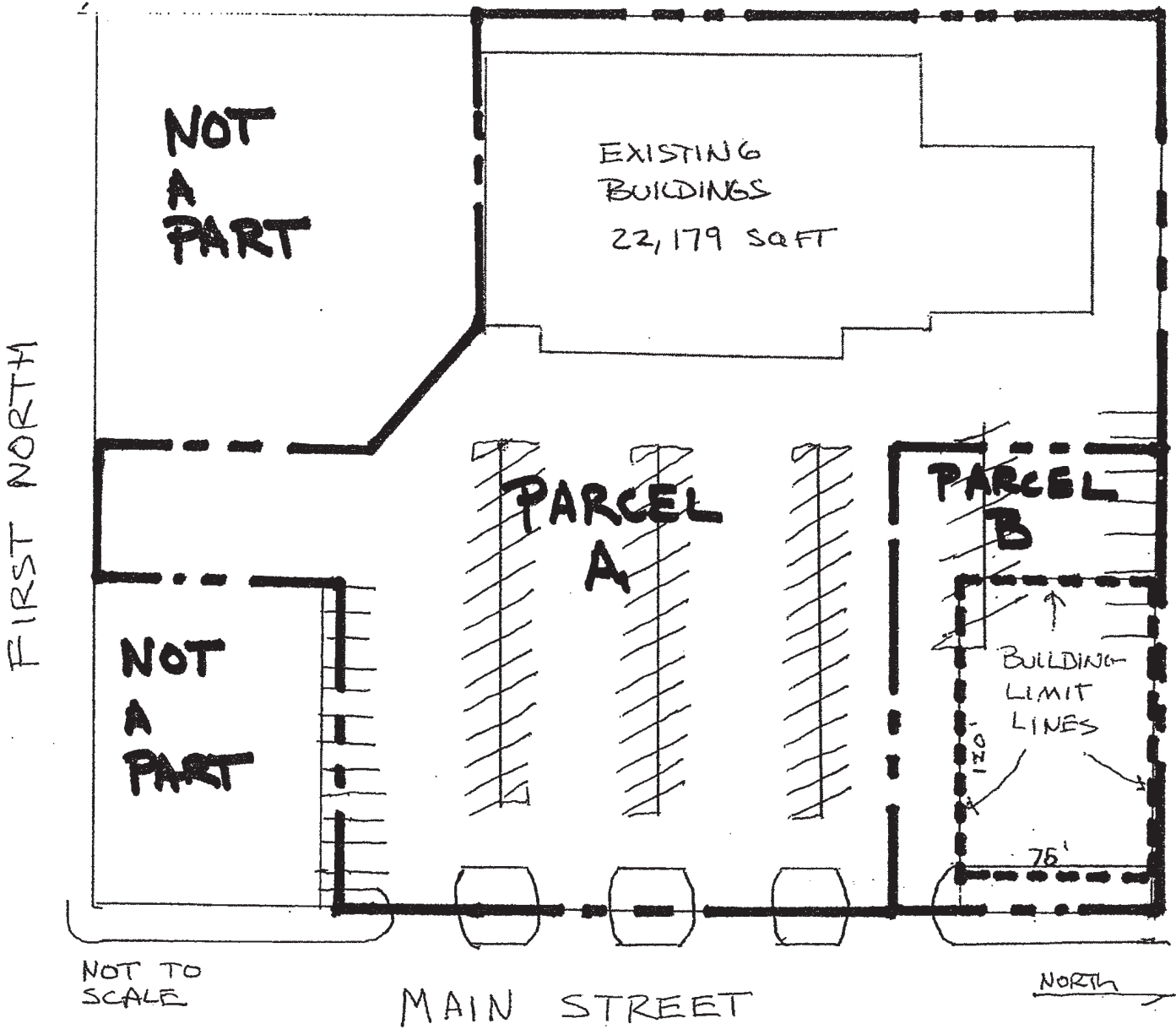


EXHIBIT A
(Site Plan)

to
Declaration of Easements
and Covenants