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**MASTER DECLARATION OF EASEMENTS
COVENANTS, CONDITIONS AND RESTRICTIONS
AND
GRANT OF EASEMENTS
FOR
PARK LANE COMMONS**

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THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR PARK LANE COMMONS (herein the "Declaration") is made as of the 7 day of JULY, 2015 by those certain land owners listed on the signature page hereof (collectively the "Declarant"), and accepted and agreed to by The Haws Companies, a Utah corporation (herein the "Developer").

RETURNED

RECITALS:

JUL 08 2015

A. Capitalized terms in this Declaration are defined in Article I below.

B. Declarant wishes to establish this Declaration to provide a governance structure and flexible system of standards and procedures for the overall development, expansion, ownership, use, administration, maintenance and preservation of Park Lane Commons, a phased master planned commercial, retail, and institutional project.

C. Declarant, as the owner of the property described as Parcel A and Parcel B on Exhibit "A" (the "Property"), intends by recording this Declaration to establish a general plan of development for the project known as Park Lane Commons. This Declaration provides a flexible and reasonable procedure for the expansion of Park Lane Commons and provides for its overall development, administration, maintenance and preservation.

D. Declarant has retained and appointed Developer to develop and manage the development and subsequent improvements of Park Lane Commons, subject to the terms and provisions of this Declaration. Through the adoption of the Governing Documents, Developer also intends to establish a uniform framework for the uniform development and management of all exterior elements of Park Lane Commons and the appointment of a master property manager of all exterior elements of Park Lane Commons and the central assessment and collection of assessments and the enforcement of the terms and provisions of the Governing Documents applicable to the uniform management of Park Lane Commons.

E. All property outlined on the Parcel Map and described in Exhibit "A" and any additional property that may be added in the future which is made a part of Park Lane Commons in the future by Recording one or more Supplemental Declarations, shall be owned, developed, conveyed and used subject to the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Park Lane Commons, their successors, successors-in-title, assigns and heirs.

NOW THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

ARTICLE I

CONCEPTS AND DEFINITIONS

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below:

1.1 **“Development Agreement(s)”** shall mean (a) that certain Supplemental Development Agreement dated June 23, 2014, entered into by and between Developer and Farmington City and (b) any other agreements entered into between Developer and any Municipal Authority with respect to development of Park Lane Commons. Any land conveyed, assigned, or transferred by Deed or other written instrument to any Municipal Authority under any Master Development Agreement shall be Exempt Property and not subject to the Design Guidelines, and the design review process conducted by the Developer pursuant to Section 4.2.1 and otherwise by this Declaration.

1.2 Omitted Intentionally.

1.3 **“Assessments”** shall mean any assessment levied and assessed pursuant to this Declaration.

1.4 **“Building(s) and Building Area(s)”**: Areas on each Parcel shown as Building Area on the Site Plan attached as Exhibit “B”, together with those Buildings and Building Areas identified in any future modification to the Site Plan for portions of the Expansion Area and as the same may be relocated from time to time.

1.5 **“Building Limit Lines”**: All that area on each Parcel which is within the area defined by the Building Limit Lines as shown on the Site Plan, as may be relocated from time.

1.6 **“City”**: Farmington City, Utah.

1.7 **“Transit Mixed Use District(s)”** shall mean any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is or may be used for one or more mixed-use purposes, including, but not limited to those uses allowed and provided for in Chapter 18 of the City’s zoning ordinance.

1.8 **“Commercial Center”**: The portion of the Park Lane Commons intended for any use other than for multifamily residential uses and residential condominium uses, as defined under Chapter 18 of the City’s Zoning Ordinance.

1.9 **“Commercial Condominium Development and/or Commercial Condominium Development Use”** shall mean a Condominium Development intended for commercial use.

1.10 **“Common Facilities”**: All those areas on each Parcel which are not Building Areas together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings, including, without limitation, all sidewalks; walkways; aisles and driveways providing ingress and egress to the stores, offices, buildings and parking areas and to and from adjacent streets and highways; all parking areas; trash facilities; the storm water retention basin, if applicable; unloading areas (except for truck docks and ramps which are for the exclusive use of a particular tenant); shrubbery; plantings and other landscaping; the illuminating and mechanical equipment used exclusively in connection with any of the foregoing; all utility lines and facilities and all sewers servicing the Common Facilities to the perimeter walls of any building in the Commercial Center; the Pylon Signs that are serving the Commercial Center – whether on or off-site; the Monument Sign; site lighting; the Pad Monuments; and all other portions of the Commercial Center designated by the Owners from time to time as Common Facilities. Canopies which extend over the Common Facilities, together with any columns or posts supporting the same, shall be deemed to be a part of the building to which they are attached and not a part of Common Facilities. Also referred to from time to time as the Common Areas.

1.11 **“Common Facilities Budget”**: As defined in Section 8.1.1.

- 1.12 **“Common Facilities Charge”**: As defined in Section 8.4.1.2.
- 1.13 **“Common Facilities Lien”** shall mean the lien created and imposed by Article XIII.
- 1.14 **“Common Facilities Maintenance”**: As defined in Section 7.1.
- 1.15 **“Condemnation Award”**: As defined in Article XIX.
- 1.16 **“Condominium Development”** shall mean a condominium ownership regime established under the laws of the State of Utah including both Residential and Commercial Condominium Developments.
- 1.17 **“Condominium Unit”** shall mean a condominium unit (as defined under Utah Code Ann. § 57-8-1 et seq.), including its appurtenant interest in all Common Facilities, established under Utah law.
- 1.18 **“Contracting Party”**: As defined in Section 4.3.1.2.
- 1.19 **“Covenants”** shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein, as amended, or supplemented from time to time.
- 1.20 **“Declarant”** shall mean the Developer and those parties having an ownership interest in the Property, assignees or such successor who assigns the rights of Declarant hereunder.
- 1.21 **“Declaration”** shall mean this Master Declaration of Covenants, Conditions, Restrictions and Grant of Easements for Park Lane Commons, as amended or supplemented from time to time.
- 1.22 **“Deed”** shall mean a deed or other instrument conveying the fee simple title in a “Lot” or “Parcel.”
- 1.23 **“Default Rate”**: A rate of interest equal to the lesser of (i) the highest rate allowed by law, or (ii) eighteen percent (18%).
- 1.24 **“Defaulting Party”**: As defined in Section 12.1.
- 1.25 **“Deficiencies”**: As defined in Section 12.2.
- 1.26 **“Design Guidelines”** means those design guidelines for development of all the real property subject to this Declaration as established by PMP process required to be submitted for the development of property within the Chapter 18 Zoning Ordinance of the City.
- 1.27 **“Development Guidelines”** shall mean those development guidelines for Park Lane Commons as defined in the PMP.
- 1.28 **“Employee Parking Areas”**: Those areas shown on the Site Plan as “Employee Parking Areas” which may be required by the Developer from time to time.
- 1.29 **“Environmental Laws”**: As defined in Section 14.3.2.
- 1.30 **“Exempt Property”** shall mean the following parts of Park Lane Commons:

1.30.1 All land and Improvements owned by or dedicated to and accepted by the United States, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective including all Municipal Authority Property and all property utilized for General Public Uses.

1.31 **“Expansion Area(s)”** shall mean additional land that may be added to the Park Lane Commons project pursuant to the terms and provisions of this Declaration and/or the Governing Documents which is contiguous to the Property and controlled by the Developer and/or Declarant.

1.32 **“Floor Area”** shall mean the total number of square feet of ground floor space in a building, whether or not actually occupied, including basement, subterranean, balcony and mezzanine space. Floor Area shall be measured from the exterior line of the exterior walls and from the centerline of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.

1.33 **“General Commercial Development or General Commercial Use”** shall mean those types of developments and uses in a Commercial Area designated by the City’s zoning ordinance and as provided for in the PMP.

1.34 **“General Public Uses”** shall mean those types of uses designated by the Master Land Use Plan as General Public Uses including but not limited to school sites and parks conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority.

1.35 **“Governing Documents”** shall mean this Declaration and such recorded amendments hereto, any Recorded Supplemental Declaration(s) for Park Lane Commons, the Park Lane Commons Rules, if any, the Design Guidelines and the Development Guidelines and the PMP.

1.36 **“Hazardous Substance”** As defined in Section 14.3.2.

1.37 **“Hotel or Motel Development and/or Hotel or Motel Use”** shall mean any area within Park Lane Commons approved by Declarant and the applicable Municipal Authority for use as a Hotel or Motel Development.

1.38 **“Improvement(s)”** shall mean any improvement now or hereafter constructed in Park Lane Commons and includes anything which is a structure or improvement for purposes of applicable Municipal Authority law including, but not limited to, any building, structure, shed, patio, fountain, pool, radio or television antenna or receiving dish, utility facility or structure, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, signs (either onsite or offsite that is serving Park Lane Commons), newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill, any ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel. All Improvements must comply with all Design Guidelines applicable to such Improvements and the PMP.

1.39 **“Land Use Classification”** shall mean the classifications to be established by the Declarant pursuant to Section 4.1, which designate the type of Improvements which may be constructed on a Lot or Parcel and the purposes for which such Improvements and surrounding land may be utilized.

1.40 **“Lease”** shall mean a written lease or sublease for the leasing or rental of Commercial or any property within Park Lane Commons.

1.41 **“Lessee”**: Any person which has entered into a lease for a portion of the Commercial Center. “Lessee” does not include a sublessee, licensee or concessionaire of a Lessee except for a

sublessee of the entire leasehold for a term of fifteen years or more or the remaining term of the lease of a Lessee, whichever is less.

1.42 **“Lienholder”**: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

1.43 **“Lot”** shall mean (a) any area of real property within Park Lane Commons designated as a Lot on any Plat recorded or approved by Declarant and limited by a Supplemental Declaration.

1.44 **“Management Fee”**: As defined in Section 8.4.1.

1.45 **“Manager”** shall mean The Haws Companies, retained to perform certain functions pursuant to this Declaration, or such other successor manager.

1.46 **“Master Land Use Plan”** shall mean the map, the initial site plan attached as Exhibit A-2 and other documents showing and/or identifying the various Park Lane Commons Land Use Classifications and density allocations applicable to various Parcels as approved by the applicable Municipal Authority and the Declarant, as the same may from time to time be amended, a copy of which shall be on file at all times in the office of the Master Association. Declarant reserves the right to modify the Master Land Use Plan from time to time.

1.47 **“Monument Sign(s)”**: Monument signs on each parcel as guided by the sign covenants within this agreement.

1.48 **“Municipal Authority”** shall mean the applicable governmental entity or municipality which has jurisdiction over some part of Park Lane Commons including without limitation, Davis County, Utah, and Farmington City, Utah.

1.49 **“Municipal Authority Property”** shall mean all real property which is from time to time conveyed, assigned, or transferred by Deed or other written instrument to the applicable Municipal Authority, including but not limited to public streets including medians and enhanced parkways, retention basins and drainage facilities and open space areas.

1.50 **“Nondefaulting Party”**: As defined in Section 12.1.

1.51 **“Park Lane Commons”** shall mean, refer to, and consist of the parcels of real property situated in Davis County, Utah described in Exhibit “A-1” which is attached hereto and incorporated herein by this reference and the development to be completed thereon, together with any real property hereafter annexed or added to Park Lane Commons pursuant to the provisions of Article XVII of this Declaration, sometimes referred to as the “Property”

1.52 **“Park Lane Commons Rules”** shall mean the rules for Park Lane Commons adopted by the Board or the Developer.

1.53 **“Operating Costs”**: As defined in Section 8.2.

1.54 **“Owner”** shall mean (a) any Person(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot or Parcel including, without limitation, one who is buying a Lot or Parcel under a recorded contract or recorded notice of such contract, but excluding others who hold an interest therein merely as security and (b) any Person(s) entitled to occupy all of a Parcel or Lot under a lease (or sublease if the assignment of the rights of an Owner are expressly granted by the sublessor to the sublessee in the sublease) for an initial term of at least ten (10) years in which case the

fee owner (or, if applicable, sublessor) of the Parcel or Lot shall not be deemed the Owner thereof for purposes of this Declaration during the term of said lease (or, if applicable, sublease).

1.55 **“Pad Monuments”**: Monument signs, or each of them, to be located on each Pad.

1.56 **“Pad(s)”**: Out parcels as all as more particularly described as lots of the Park Lane Commons Parcel Map and as shown on the Site Plan.

1.57 **“Parcel”** shall mean an area of real property within Park Lane Commons limited by a Supplemental Declaration or the Master Land Use Plan to one of the following Land Use Classifications: Shopping Center Development, Commercial Condominium Development, General Commercial Development, Office/Industrial Development, Hotel and Motel Development, Residential Condominium Development (but only until the condominium regime therefor is recorded). The term Parcel shall also include those areas of land within Park Lane Commons which a Supplemental Declaration or the Master Land Use Plan designates for Residential Use but which have not yet been subdivided into Lots and related amenities and rights-of way, but any such areas shall cease to be a Parcel upon the recordation of a Plat or other instrument covering the area and creating Lots and related amenities. A Parcel shall not include a Lot, any Exempt Property but, in the case of staged developments, shall include areas not yet included in a Plat, condominium property regime or other recorded instrument creating Lots and related amenities. Declarant shall have the right, subject to the terms of the Master Development Agreements, to identify and create and/or reconfigure the boundaries of any Parcel of which Declarant is the Owner.

1.58 **“Park” or “Project” or “Property”** shall mean the Park Lane Commons.

1.59 **“Person”** shall mean a natural individual, a corporation, limited liability company, partnership or any other entity with the legal right to hold title to real property.

1.60 **“Plat”** shall mean any subdivision plat or record of survey map affecting Park Lane Commons filed in the office of the County Recorder of Davis County, Utah, as such may be amended from time to time, including but not limited to any such Recorded plats or maps respecting all or any portion of the Expansion Area.

1.61 **“PMP”** The project master plan required under the City’s zoning ordinance to be approved for the development and construction of each building within the Property.

1.62 **“Pylon Sign(s)”**: Pylon signs on each parcel as guided by the sign covenants within this agreement. Developer may locate Pylon Signs on property outside of Park Lane Commons.

1.63 **“Real Estate Taxes”**: As defined in Section 10.1.

1.64 **“Receipt”**: As defined in Section 20.10.2.

1.65 **“Recording” “Record”** shall mean placing an instrument of public record in the office of the County Recorder of Davis County, Utah and **“Recorded”** shall mean having been so placed of public record.

1.66 **“Residential” or “Residential Areas”** shall include Rental Apartments, Residential Condominium Developments, and at the option of Declarant, all common recreational areas and facilities associated with any of the foregoing and other non-Commercial Areas.

1.67 **“Residential Condominium Development and/or Residential Condominium Development Use”** shall mean a Condominium Development intended for Single Family Residential Use.

- 1.68 **“Restrictions”**: The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.
- 1.69 **“Seasonal Sales Area”**: Which will be shown on the Site Plan, if allowed.
- 1.70 **“Service Facilities”**: Loading docks, trash enclosures, bottle storage areas and other similar service facilities.
- 1.71 **“Shopping Center Development and/or Shopping Center Use”** shall mean any area within Park Lane Commons approved by Declarant and the applicable Municipal Authority for use as a Shopping Center.
- 1.72 **“Single Family”** shall mean a group of one or more persons, each related to the other by blood, marriage, or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit.
- 1.73 **“Site Plan”**: The site plan attached hereto as Exhibit “A-2” and incorporated herein by this reference, as the same may be amended by Declarant from time to time.
- 1.74 **“Special Assessment”** shall mean any assessment levied and assessed pursuant to this Declaration or by the Master Association. This shall include and not be limited to direct charges to specific users that require special or unique costs for uses of the Common Areas as may be determined by the Developer.
- 1.75 **“Special Service Districts”** shall mean one or more special service districts which may be established to provide Park Lane Commons with, among other things, waste water treatment and disposal services, storm water disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for nonstandard street lights, culinary water and facilities including pump stations, snow plowing and school bus stop shelters.
- 1.76 **“Sub-Association”** shall mean any Utah nonprofit corporation or unincorporated association, or its successor in interest, the membership of which is composed of the Owners of a Parcel or Lots subject to one or more Supplemental Declarations. Subject to Declarant approval, any owner of property in Park Lane Commons may, but shall not be required to, Record a Supplemental Declaration against a parcel or may organize such Sub-Association under the conditions set forth in this Declaration.
- 1.77 **“Supplemental Declaration”** shall mean an amendment or supplement to this Declaration filed or otherwise in this Declaration that subjects the Expansion Area to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.
- 1.78 **“Use”** shall mean one or more specific types of property development and classification as set forth in Section 4.1 of this Declaration.
- 1.79 **“Voting Representative”** shall mean the representative(s) selected by the Owner within each Lot or Parcel, as applicable, who is responsible for casting votes attributable to Parcels, Lots or other properties, if any, on matters requiring a vote as provided for under this Declaration. Each Parcel and Lot and Developer shall have a single Voting Representative appointed by the Owner of said Parcel or Lot.

ARTICLE II

PARTIES

2.1 **Parties.** Declarant is the owner of property described on Exhibit "A-2". To the extent that Parcels are sold within the Park Lane Commons project or it is expanded in the future pursuant to Article XVI below, other owners of Parcels may become parties for purposes of this paragraph of the Declaration.

ARTICLE III

PROPERTY SUBJECT TO PARK LANE COMMONS DECLARATION

3.1 **General Declaration Creating Park Lane Commons.** Declarant hereby declares that all of the real property within Parcel A & B of Park Lane Commons described in Exhibit A, together with any Expansion Area annexed pursuant to Article XVI of this Declaration, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended or modified from time to time. In addition, some or all of the real property within Park Lane Commons may be subject to Recorded Supplemental Declarations as applicable and as amended from time to time. Declarant intends to develop Park Lane Commons by subdivision into various Lots and Parcels and to develop or sell Lots and/or Parcels. As portions of Park Lane Commons are developed and/or sold for development, except as otherwise provided in this Declaration, Declarant or its designated nominee shall Record one or more Supplemental Declarations covering such property. Said Supplemental Declarations will specify the Land Use Classification and permitted uses of property described therein (in accordance with Article IV hereof) and will incorporate this Declaration and establish such additional covenants, conditions and restrictions as may be appropriate for that property. This Declaration and all subsequent Supplemental Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of Park Lane Commons and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Park Lane Commons and every part thereof. All of this Declaration and applicable Supplemental Declarations shall run with Park Lane Commons and shall be binding upon and inure to the benefit of Declarant, any Master Association, all Owners and occupants and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Master Land Use Plan or any portions thereof as to which a Supplemental Declaration has not been recorded. This Declaration shall not be construed to prevent the Declarant from dedicating or conveying portions of Park Lane Commons, including but not limited to streets or roadways, for uses other than as a Lot, Parcel, subject to the provisions of Section 4.1.

3.2 **Municipal Authority Property.** From time to time, the Declarant may, in its sole and exclusive discretion convey, assign, or transfer by Deed or other written instrument certain Common Facilities to the applicable Municipal Authority. Once any such Common Facilities are conveyed, assigned or transferred to a Municipal Authority, they shall be Exempt Property and shall constitute Municipal Authority Property. It is contemplated that from time to time certain open space areas, infrastructure facilities and other real property and facilities, may be conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority, which conveyances are authorized pursuant to this Declaration.

ARTICLE IV

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS AND DEVELOPMENT GUIDELINES

4.1 Land Use Classifications. As portions of Park Lane Commons are readied for development and/or sale, the Land Use Classifications, restrictions, easements, rights-of-way and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in PMP and shall be part of a Supplemental Declaration which shall be recorded for that portion of Park Lane Commons. Any such Supplemental Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. In exercising its authority to record Supplemental Declarations, Declarant may impose new Land Use Classifications and Design Guidelines applicable to such Land Use Classifications or new restrictions so long as such are generally in conformance with then existing uses and restrictions applicable to Park Lane Commons and with the scheme of development contemplated by the Master Land Use Plan and this Declaration and that of the City's zoning ordinance. The contemplated Land Use Classifications are as follows:

4.1.1 Building 1 – all uses as allowed under the City's zoning ordinance;

4.1.2 Building 2 – all uses as allowed under the City's zoning ordinance;

4.1.3 Building 3 – all uses as allowed under the City's zoning ordinance;

4.1.4 Building 4 – all uses as allowed under the City's zoning ordinance;

4.1.5 Building 5 – all uses as allowed under the City's zoning ordinance;

4.1.6 All other future buildings within the Park Lane Commons – all uses allowed under the City's zoning ordinance.

4.1.7 General Public Uses as approved by the Declarant.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such Land Use Classifications, shall be determined in the applicable Supplemental Declaration, which will include a PMP for each building constructed, and shall be within the complete discretion of the Declarant. All Supplemental Declarations shall be subject to the zoning laws of applicable Municipal Authority and the Development Agreement.

4.2 Covenants, Conditions, and Restrictions Applicable to Lots and Parcels Within All Land Use Classifications. The following covenants, conditions, restrictions and reservations of rights shall apply to all property within Park Lane Commons, the Owners and lessees thereof, and all occupants and residents, if any, whether or not a Supplemental Declaration has been recorded on said property and regardless of the Land Use Classification of such Property.

4.2.1 Architectural Control. Each Parcel developed shall prepare a PMP (the "PMP Process") and follow the City's zoning ordinance for approval. No Improvements (whether temporary or permanent), alternations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within Park Lane Commons, or the Improvements located thereon, from its natural or improved state existing on the date this Declaration is recorded shall be made or done without the prior approval of the PMP Process and approval of the Developer, except as otherwise expressly provided in this Declaration. All Improvements must comply with the Design

Guidelines applicable to such Improvements and Land Use Classifications as provided for in the City's Zoning Ordinance. No building, landscaping, fence, wall or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Developer. All subsequent additions to or changes or alterations in any building, landscaping, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots or Parcels, shall be subject to the prior written approval of the Developer. No changes or deviations in or from the plans and specifications once approved by the Developer shall be made without the prior written approval of the Developer. Subsequent material changes shall be approved by the City prior to being adopted by the Developer. The existing commercial City zoning requirements will govern.

4.2.2 Building Location All buildings and other structures shall be placed or constructed upon the Parcels only in the Building Areas; subject to the PMP Process. No material changes to any of buildings or common areas are allowed without the approval of the Developer.

4.2.3 Type and Design of Building/Landscaping:

4.2.3.1 Quality and Compatibility. Each building constructed on Park Lane Commons in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings as illustrated in Exhibit B and determined by the Developer, as determined in their sole and absolute discretion.

4.2.4 Structural Integrity. No building shall be built in such a manner as adversely to affect the structural integrity of any other building in the Project.

4.2.5 Building Maintenance. Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class properties and projects of comparable size and nature located in Utah.

4.2.6 Landscape Requirements. Declarant and Developer hereby expressly reserve the right to establish landscaping requirements applicable to all elements of Park Lane Commons – which shall be determined at the time each Parcel submits to the PMP Process. Without limiting the generality of the foregoing, Declarant and Developer shall establish landscape requirements with the assistance of the Developer for each of the Land Use classifications with particular interest being paid to landscaping which will satisfy the goals of low water and natural resource use, resilient for the climate and compatible with other elements in the North Point Park Project. Declarant and Developer may choose to adopt and implement elements of a desert landscape theme, xeriscaping and similar landscape concepts. It is further the intent of Declarant and Developer that all such landscaping shall be of high quality and appropriate for first class high quality development. Said Landscape Requirements shall become a part of the Design Guidelines upon completion and approval by the City.

4.3 Construction Requirements: The following construction requirements shall be applicable to all property within Park Lane Commons, the Owners and Lessees thereof, and all occupants and residents if any, whether or not a Supplemental Declaration has been recorded on said Property and regardless of the Land Use classification of such Property. Upon completion of each permitted improvement the Owner shall cause that a full set of construction drawings be delivered to the Developer along with copies of certificates of completion and occupancy permits.

4.3.1 Timing and Manner of Work. All work performed in the development, construction, maintenance, repair, replacement, alteration or expansion of any Improvement, building, sign or Common Facilities improvements shall be effected as expeditiously as possible and in such a manner as not unreasonably to interfere, obstruct or delay (i) access to or from the Project, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Facilities located in front of any building constructed in the Park, or (iii) the receiving of merchandise by any business in the Park including, without limitation, access to Service Facilities. In addition:

4.3.1.1 Staging for the construction, replacement, alteration or expansion of any building, sign or Common Facilities improvements located in the Commercial Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Commercial Center approved in writing by the Developer; however, to the extent possible, the staging area must be self-contained on the Parcel where construction activity is to occur.

4.3.1.2 Unless otherwise specifically stated herein, the person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause promptly to be repaired and restored to its prior condition all buildings, signs and Common Facilities improvements damaged or destroyed in the performance of such work.

4.3.2 Liens. The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in Section 2.4.1 above; subject to the following:

4.3.2.1 The Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

4.3.2.2 The Contracting Party shall, within thirty (30) days after receipt of written notice from an Owner or Lessee, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in a manner reasonably satisfactory to the person giving notice, failing which such Owner or Lessee shall have the right, at the Contracting Party's expense, to transfer said lien to bond.

4.3.2.3 The Contracting Party shall indemnify, defend and hold harmless the Owners, Developer, and occupants of the Commercial Center from any and all liability, claims, damages, expenses (including reasonable attorney's fees incurred in or before any action, at trial, on appeal or in bankruptcy court), liens, claims of liens, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its tenants, subtenants, agents, contractors or employees.

4.3.3 Temporary Encroachments. The parties acknowledge and agree that incidental encroachments upon the Common Facilities may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Facilities improvements located in the Commercial Center, all of which are permitted

hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Facilities or with the normal operation of any business in the Commercial Center.

4.3.4 Insurance. Except for those persons who maintain a net financial worth of at least \$200,000,000.00, during the course of any construction or repair as to any building on a Parcel, the person responsible for such construction or repair shall obtain and maintain:

4.3.4.1 Commercial General Liability insurance (as to which the other Owners and Developer shall be additional insureds including products completed and ongoing operations) on an "occurrence basis" against claims for "personal injury" including, without limitation, bodily injury, death or property damage occurring on, in or about Park Lane Commons and the adjoining streets, sidewalks and passageways, with such insurance to be in single limit coverage in the minimum amount of \$1,000,000.00 per occurrence / \$2,000,000.00 general aggregate;

4.3.4.2 Workers' compensation insurance for all employees of the entity according to statute for the state of Utah conducting such construction who are engaged in such construction, in the amounts established by law; and Employer Liability, subject to limits of \$500,000.00 each accident / disease; and

4.3.4.3 "Builder's completed value all risk" insurance against "all risks of physical loss" including collapse and transit coverage, during construction or repair, loss of business income, reimbursement of fees and costs associated with any loss, and earthquake with deductibles not to exceed \$5,000.00, covering the total value of work performed and equipment, supplies and materials furnished.

4.3.5 Condition Pending Construction. Each Owner shall maintain the Building Area of any Parcel in the Commercial Center held for future construction of building improvements in a clean condition, free from weeds, and either landscaped and/or covered with gravel base; provided, however, that on or before the date which will be three (3) years after the date that the building on the Grocery Store Parcel first opens for business, each Owner shall either: (i) install an asphalt cap on such Parcel; (ii) install landscaping and a sprinkling system on such Parcel; or (iii) commence or cause to be commenced construction of a building upon such Parcel and thereafter diligently pursue such construction to completion.

4.3.6 Casualty and Condemnation. In the event all or any portion of any building in Park Lane Commons is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not adversely to affect the drainage of the Park Lane Commons or any portion thereof, and shall be covered by a one inch asphalt dust cap (or a compacted gravel base).

4.3.7 Additional Requirements/Design Guidelines. The Developer, in its discretion, may adopt and implore such additional or other Construction Requirements as the

Developer deems appropriate, at such time such additional requirements shall become part of the Design Guidelines.

ARTICLE V

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON FACILITIES

5.1 Ingress, Egress and Parking: Each Owner, as grantor, hereby grants to each other Owner and to its tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel or Lot, a nonexclusive and perpetual easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Facilities located on the grantor's Parcel(s) or Lot(s), except for those areas devoted to Service Facilities or drive-up or drive-through customer service facilities. The rights of ingress and egress set forth in this Section 5.1 shall apply to the Common Facilities for each Parcel or Lot.

5.2 Utility Lines and Facilities:

5.2.1 Grant. Each Owner, as grantor, hereby grants to each other Owner, for the benefit of each Parcel belonging to the other Owners or in which Developer have an interest, as applicable, as grantees, a nonexclusive and perpetual easement under, through and across the Common Facilities of the grantor's Parcel(s) or Lot(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, storm and sanitary sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. In connection therewith:

5.2.1.1 All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below ground level or surface of such easements except for ground-mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Project).

5.2.1.2 The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Facilities or with the normal operation of any business in the Commercial Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use, and shall provide as-built plans for all such facilities to the Owners or, if applicable, the Developer, of all Parcels upon which such utility lines and facilities are located, within thirty (30) days after the date of completion of construction of same.

5.2.2 Relocation. At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located in the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the

Parcels serviced by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners or, if applicable, the Developer, of all Parcels served by all such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

5.2.3 Additional Grants. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration, and provided that such easements do not interfere with or limit use of Building Areas as shown on the Site Plan.

5.2.4 Signs. Developer reserves the right to adopt sign criteria applicable to all portions of the Project, which must be approved by Developer in writing prior to submittal by any Parcel for the PMP Process. Such criteria shall include, without limitation, the power to create easement and access rights and design and construction guidelines applicable to the development, installation, construction, ownership and use of such signs and the properly underlying and surrounding such signs, but shall be consistent with the illustrations on Exhibit "C" and previous approved signs. Developer hereby grants each Lessee and Owner who has signage on the pylon sign described in Exhibit C of the Development Agreement, a nonexclusive and perpetual easement under, through and across the Common Facilities for access to said pylon sign for said Lessees and Owners to install, maintain, repair and replace their respective sign panels on said pylon sign.

ARTICLE VI

OPERATION OF COMMON FACILITIES

6.1 Parking:

6.1.1 Charges. There shall be no charge for parking in the Common Facilities without prior written consent of the Developer or unless otherwise required by law.

6.1.2 Parking Spaces. The Commercial Center shall at all times contain the greater of (i) four (4) parking spaces per 1,000 square feet of the total Floor Area within the Commercial Center, or (ii) the minimum number of parking spaces required by law and as required under the PMP Process.

6.2 Employee Parking. The employees, contractors, agents, officers and partners of all Owners, Developer, Lessees and occupants of the Commercial Center shall use only the Employee Parking Areas for parking, as designated from time to time by Developer. Upon notification, an Owner shall cause its employees and agents to park only in the Employee Parking Areas. The Developer may from time to time expand and or relocate the Employee Parking Areas in the Commercial Center by written notice to all Owners and occupants of space within the Commercial Center. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Commercial Center.

6.3 Protection of Common Facilities. Each Owner and Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Facilities from using the Common Facilities for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Commercial Center, except along the common boundary line of any Parcel with any other Parcel.

6.4 Exterior Sales. No portion of the Common Facilities may be used by an occupant of a Parcel for the display and/or sale of merchandise and services, except as follows:

6.4.1 Sidewalks. An occupant of a Parcel may use the sidewalks directly in front of the store of such occupant for the sale of merchandise and services, provided that all such merchandise and services exhibited for sale (and the sidewalk, during periods in which such merchandise or services are being displayed) must be kept in a safe, neat, clean and attractive manner, including sweeping and removal of snow, ice or other debris.

6.4.2 Seasonal Sales Area. The occupant of the Commercial Center may be permitted to use the Seasonal Sales Area for seasonal sales of merchandise from time to time as approved by the Developer, but not continuously, provided that (i) such sales shall not interfere with the free movement of vehicular traffic within the Commercial Center or with access to or from the Commercial Center, or any part thereof, to or from any public right-of-way; (ii) such occupant maintains the Seasonal Sales Area in a safe, neat and clean condition including sweeping and removal of snow, ice or other debris, to the extent such maintenance is required during periods in which such occupant is making use of the Seasonal Sales Area or to the extent such use by the occupant prohibits Manager from fulfilling Common Facilities Maintenance; (iii) sales shall be limited to not more than four (4) occasions (and one sale location per occasion) per calendar year for a cumulative total of not more than sixty (60) days duration per calendar year; (iv) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the occupant of the Commercial Center upon termination of said activities; and (v) the Common Facilities shall be promptly repaired to their condition immediately prior to said sale at the sole cost and expense of the occupant of the Commercial Center.

6.4.3 Occupant. For purposes of this Section 6.4 only, "occupant" shall mean the Owner or Lessee of the applicable Parcel, or, if none of these occupies the Parcel, then such person as occupies the Parcel provided that the Owner or Lessee shall remain responsible and liable to see that any external sales conducted pursuant to this Section 6.4 comply with the requirements set forth herein.

6.5 Lighting: The lighting in the Common Facilities, including the lighting of the exterior of the buildings within the Commercial Center, shall be kept on during those dawn, dusk and nighttime hours that fall within the regular business hours of the Commercial Center, and in any event until 11:00 p.m. at night, provided, however, that such hours need not be maintained in the event of failure of power, restrictive governmental law or regulations, riots, insurrection, war, act of God, or other reason of a like nature not the fault of the party responsible for such lighting, in which instance performance of the foregoing covenant shall be excused. As noted elsewhere in this Declaration, the parking lot lighting on each Parcel, shall be metered separately from that in the remainder of the Commercial Center and the electricity therefor shall be paid for by the Lessee or occupant of the Parcel, or by the Owner of the Parcel, if there is no Lessee or occupant of the Parcel. Any Owner who requires that the lighting in the Commercial Center or a section

of the Commercial Center be kept on at times different than regular business hours shall request such in advance from the party controlling such parking lot lighting in the Commercial Center; shall pay for the costs of such extra lighting; and shall reimburse the party controlling the lighting of such Parcel. All requests for lighting during extended or additional hours shall be granted, provided and so long as the requesting party complies with the terms and conditions of this Section 6.5 regarding the payment and reimbursement for such lighting.

6.6 Recycling Facilities: One or more recycling centers may be installed in parking areas of the Commercial Center subject to the consent of the Developer as to the appearance and location thereof. All recycling centers shall be of tasteful design and composition and shall be located only at such place(s) as approved by the Developer. Any recycling centers shall be maintained in clean condition free from refuse and material stacked on the ground or elsewhere other than in a depository intended for such material.

ARTICLE VII

MAINTENANCE AND REPAIR OF COMMON FACILITIES.

7.1 Operation of the Common Facilities: The Common Facilities shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, the provisions of this Declaration, and in a safe, sound condition, clean and free of rubbish, debris, or other hazards to persons using the same. Except as set forth herein, and whether or not operating under the direction of the Declarant, Manager shall be responsible to operate and maintain all Common Facilities improvements and to repair and replace the same with materials at least equal to the quality of the materials being repaired or replaced, so as to maintain the architectural and aesthetic harmony of the Commercial Center as a whole. This operation, maintenance and repair (i) shall be performed and carried out promptly and in a first class and workmanlike manner comparable to that of first class commercial centers of comparable size and nature located in the Salt Lake - Ogden, Utah area; (ii) shall be referred to herein as the "**Common Facilities Maintenance**"; and (iii) shall include but not be limited to the following:

7.1.1 Drive and Parking Areas. Maintaining, repairing, cleaning and replacing all blacktop, paved surfaces and curbs in a smooth and evenly covered condition, and such work shall include, without limitation, sweeping, restriping, resealing and resurfacing. (For the purpose of this section, an overlay of the drive and parking areas shall be considered a maintenance item.)

7.1.2 Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Facilities in a first-class, clean and orderly condition. All sweeping shall be done at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Facilities by persons intending to conduct business with occupants of the Commercial Center.

7.1.3 Signs and Markers. Placing, cleaning, keeping in repair, replacing, and repainting any appropriate directional signs or markers, including any handicapped parking signs, and also other signs, except as otherwise provided in this Declaration or in the established sign criteria with regard to sign facia and cans which shall be supplied and maintained by the businesses designated thereon.

7.1.4 Lighting. Maintaining, cleaning and replacing Common Facilities lighting facilities, including lamps, ballasts and lenses; provided, however, that from and after the date on which a Building is constructed on a Parcel on which lighting facilities are located, the Owner of that Parcel shall be responsible for Common Facilities Maintenance for such lighting facilities, as set forth in this Section.

7.1.5 Landscaped Areas. Maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of buildings, in an attractive and thriving condition, and replacing shrubs and other landscaping as necessary; provided, however, that if any occupant requires "special" landscaping (i.e., beyond the standard landscaping requirements for the remainder of the Commercial Center), the cost of installation, replacement and maintenance of such special landscaping shall be borne solely by such occupant and shall not be included in Operating Costs. Such additional services shall be provided for by the Manager and billed directly to the owner or Occupant requiring such additional services.

7.1.6 Common Utilities. Maintaining, cleaning, replacing, and repairing any and all common utility lines, including but not limited to any sprinkling systems and common area water lines; and payment of all electrical, water and other utility charges or fees for service furnished to such Common Facilities, including lighting for the signs and prior to the construction of a building on a Parcel, parking lot lighting for that Parcel. To the extent any utilities or services are not specific to any one parcel they shall remain a Common Utility. From and after the date on which a building is constructed on a Parcel, lighting for parking lots or parcels shall be separately metered as between the Parcel and the remainder of the Commercial Center and shall be paid for by the Lessee or occupant of the Parcel, or by the Owner of the Parcel if there is no Lessee or occupant of the Parcel.

7.1.7 Obstructions. Keeping the Common Facilities free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

7.1.8 Sidewalks. Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to buildings located within the Commercial Center. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Facilities.

7.1.9 Traffic. Regulation of traffic at entrances and exits to the Commercial Center and within the Commercial Center as conditions reasonably require in order to maintain an orderly and proper traffic flow. Notwithstanding anything to the contrary, each Owner and/or Lessee, as the case may be, shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area on or intended to service such Owner or Lessee's Parcel or Building Area.

7.1.10 Insurance. Except for those persons who maintain a net financial worth of at least \$200,000,000.00, obtaining and paying premiums for insurance coverage on the Common Facilities as provided in Article IX.

7.1.11 Walls. Maintaining, repairing and replacing, when necessary, all Common Facilities walls, fences, or barricades.

7.2 **Manager:** The person who is responsible for the operation and maintenance of the Common Facilities from time to time shall be referred to herein as “**Manager**” and shall be selected and operate as follows:

7.2.1 **Initial Manager.** Initially, the Common Facilities Manager shall be Developer.

7.2.2 **Duties.** Manager shall perform the Common Facilities Maintenance and shall maintain the Common Facilities in accordance with the requirements of any lease.

7.2.3 **Replacement by Declarant.** Declarant shall have the right to replace Manager only as provided in the applicable management contract with Manager.

7.3 **Promulgation of Rules:** The Developer may promulgate such reasonable, non-discriminatory rules and regulations to govern the use of the Common Facilities as they may deem appropriate, including the regulation of employee parking.

7.4 **License to Carry Out Intent of this Declaration:** Each Owner hereby grants to Manager, its agents and employees a license to enter upon its Parcel to discharge the duties to perform the Common Facilities Maintenance duties and provide insurance, naming Manager as an additional insured of the Common Areas.

ARTICLE VIII

COMMON FACILITIES COSTS

8.1 **Common Facilities Budget:** A budget for Common Facilities costs shall be formulated and made effective in the following manner, as applicable:

8.1.1 **Submission for Review.** At least sixty (60) days prior to the beginning of each calendar year, or at least thirty (30) days prior to the completion of construction of the first building in the Commercial Center, Manager shall submit to the Declarant an estimated budget (“**Common Facilities Budget**”) for the projected Operating Costs, Management Fees and Common Facilities Charges for the ensuing calendar year (or, in the case of an initial partial calendar year, that ensuing partial year). The Common Facilities Budget shall identify separate cost estimates for major categories in accordance with good Commercial center management practice.

8.1.2 **Bids.** In determining the Common Facilities Budget, Manager shall submit major items of Common Facilities maintenance work for competitive bid to responsible bidders. Upon an Owner’s request, the names of the bidders and their respective bids shall be furnished to such Owner together with the Common Facilities Budget, and the contract shall be awarded to the low bidder unless Manager shall otherwise reasonably determine. Manager may elect to provide any of the services it deems necessary at competitive rates for the market area.

8.1.3 **Approval by Declarant.** The Owners shall give written notice to Manager of approval or disapproval of the Common Facilities Budget before the later of December 10th or thirty (30) days after receipt of such Budget. Failure to give notice of approval or disapproval shall be deemed to be approval. If any Owner timely objects to the Common Facilities Budget or any element thereof by specifying such objection and the reason

therefor, the Common Facilities Budget shall not be deemed approved until such objection is resolved. Manager and Declarant shall seek to resolve such objection between them. If the objection relates to any bid(s) and the Owner requests that such item(s) be re-bid, Manager shall do so, and the lowest responsible bid (as determined by Manager) in each category of the previous and new bids shall be accepted. If the Owners and Manager cannot agree, the matter shall be referred to binding arbitration in accordance with the provisions of this Declaration.

8.1.4 Options Upon Disagreement. If a Common Facilities Budget is not fully approved by December 10 of any calendar year, Manager may elect either (i) to proceed with its duties in accordance with the Common Facilities Budget for the previous year plus an annual CPI increase, subject to adjustment when the current Budget is actually approved; or (ii) to not provide the service for the item in dispute until successfully arbitrated.

8.1.5 Implementing Budget. After the Common Facilities Budget is approved, Manager shall contract with the approved low bidders, pay all of the Operating Costs, and use its reasonable efforts to perform the Common Facilities Maintenance in accordance with the Common Facilities Budget.

8.1.6 Emergency Repairs. Notwithstanding the foregoing, Manager shall have the right to make emergency repairs to the Common Facilities to prevent injury or damage to person or property or to prevent disruption in the use of the Common Facilities, provided that Manager shall nevertheless advise the Owners of such emergency condition as soon as reasonably possible, including any corrective measure(s) taken and the cost thereof. If the cost of said emergency action exceeds \$2,000, Manager may charge a supplemental billing to the Owners, together with evidence supporting such, and the parties responsible for payment of Operating Costs shall pay their proportionate share thereof within thirty (30) days. If the emergency cost is less than \$2,000, then such costs shall be included as Operating Costs to be reimbursed appropriately or refunded at year end as provided herein.

8.1.7 Unforeseen Items. Manager shall be entitled to reimbursement of actual expenses for unforeseen non-emergency items not included in the Common Facilities Budget without first obtaining each Owner's approval so long as such Owner's proportionate share of the cumulative amount of such items does not exceed \$10,000 in any calendar year.

8.1.8 Disagreement over Unbudgeted Items. In the event of a good faith disagreement between Manager and any Owner over the amount of or validity of any unbudgeted Common Facilities Charge billed to such Owner by Manager, such Owner may pay such amount under protest, and such Owner's sole remedy shall be to refer such disagreement to binding arbitration in accordance with the provisions of this Declaration.

8.1.9 Reimbursement. Manager shall be reimbursed for all of its out-of-pocket expenses incurred in performing Common Facilities Maintenance to the extent such expenses are provided for in the approved Common Facilities Budget, or incurred as emergency repairs or unforeseen items as provided above, plus a Management Fee on such amounts.

8.1.10 Minimizing Operating Costs. Manager agrees to perform its Common Facilities Maintenance on a competitive basis with an end to keeping Operating Costs at a reasonable minimum. Notwithstanding, if Manager employs its own personnel to perform parking lot sweeping, snow removal, refuse removal or other like actions for which Manager incurs Operating Costs, Manager shall be entitled to collect for such services its actual direct and

indirect costs (including amortization on equipment, if any), as estimated by Manager and approved by Declarant, provided that the total charge is not greater than the lowest available reputable and dependable bid from an outside contractor for a comparable service.

8.2 Operating Costs: The following expenses shall be referred to as “**Operating Costs**”:

8.2.1 General. Costs for performing Common Facilities Maintenance;

8.2.2 Employees. The expenses (including without limitation hourly compensation paid to or on behalf of employees, and based upon competitive hourly rates) of Manager for work done at the Commercial Center in performing the Common Facilities Maintenance;

8.2.3 Third Parties. The expenses incurred to unrelated third parties in performing the Common Facilities Maintenance;

8.2.4 Liability Insurance. Comprehensive Commercial General Liability insurance premiums on the Common Facilities in an amount of not less than \$2,000,000 and casualty insurance on the Common Facilities and in accordance with Section 4.3.4;

8.2.5 Real Estate Taxes. Real Estate Taxes on the Commercial Center, unless paid separately. Or, if paid separately then just that prorata portion of the common areas;

8.2.6 Other Expenses. Such other expenses and costs described and/or approved in (i) this Declaration or (ii) any Supplemental Declaration, as acceptable expenditures by the Manager.

8.3 Adjustment to Operating Costs: The Operating Costs shall be adjusted to reflect the following:

8.3.1 Exclusions. There shall not be included in the Operating Costs the following: (i) any administration charge in addition to the actual cost of maintenance, including any overhead charges, (except that the Management Fee may be charged to Owners in accordance with the provisions of Sections 8.1.9 and 8.4.1 and employees may be paid pursuant to Section 8.2.2); (ii) any bonuses to Manager’s employees; (iii) interest or payments on any of Manager’s or Declarant’s construction or permanent financing for the Commercial Center or ground lease payments; (iv) expenses resulting from the negligence or acts of Manager and its agents and employees, or to the extent recoverable by Manager, resulting from the negligence or acts of other tenants in or the customers and invitees of the Commercial Center; (v) leasing fees related to the development of, or the leasing or enforcement of leases in, the Commercial Center; (vi) interest or penalties on any bill owing to Manager’s failure timely to pay such bill; and (vii) costs related to the testing or remediation of any Hazardous Substance, unless and to the extent that the basis for such testing or remediation was caused by a person or persons who are not able to be determined or who are unable to pay for such testing and remediation.

8.3.2 Capital Expenses. Any expense or cost for a capital addition or replacement to the Common Facilities or any other element of Operating Costs (including, without limitation, equipment to maintain the Common Facilities, blacktop replacement, paving replacement, and curb, gutter, sidewalk or adjoining street repair required by a municipal

authority or assessment district), shall be an Operating Cost for the year in question. The Owner of the Parcel as to which the Capital Expense is incurred shall pay the expense in addition to its Common Facilities charge. To the extent that such Capital Expense cannot be directly attributed to an individual Owner, then it shall be included in the annual budget and distributed pro rata to all the Owners.

8.4 Common Facilities Charge:

8.4.1 **Determination.** Each Owner shall pay to Manager its prorata share of the Operating Costs (as calculated pursuant to Section 8.4.2) plus its prorata share of a management fee (the "**Management Fee**") equal to Ten Percent (10%) of the Operating Costs, which Management Fee may be charged to Owners in addition to the Operating Costs as defined herein, subject to the following terms and conditions:

8.4.1.1 Operating Costs for the purpose of computing the Management Fee, shall include all costs of the Common Facilities.

8.4.1.2 The amount due from each Owner pursuant to this Section 8.4.1 is referred to as the "**Common Facilities Charge.**"

8.4.1.3 In the event of a disagreement between Manager and an Owner over the amount of or validity of any Common Facilities Charge billed to such Owner by Manager, the Owner shall have the right to protest said amount in controversy and to refer such matter to binding arbitration in accordance with the provisions of this Declaration. No single non-budgeted capital expenditure in excess of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made without the prior written consent of the Declarant, which consent shall not be unreasonably withheld or delayed.

8.4.2 **Prorata Share.** The prorata share of Operating Costs and Management Fee for each Parcel shall be equal to a percentage derived by dividing the total Land Area allocated and described on Exhibit B for each individual Building within the Commercial Center by the Total Land Area allocated for those Buildings that have been constructed and received a certificate of completion. As construction of additional Buildings are completed, each Parcel's proportionate share shall be adjusted. Completion of construction for purposes of this Section 8.4.2 shall mean (i) in the case of general retail buildings, when the building shell is completed and the first tenant has opened for business, and (ii) in the case of a build-to-suit building, when the initial lessee/occupant receives a certificate of occupancy for said building and the tenant has opened for business. After completion of construction of the total Building Areas of all Buildings in the Commercial Center, the proportionate share of any Parcel as outlined herein shall be fixed regardless of whether any buildings on which construction is completed are leased, occupied or vacant.

8.4.3 **Payment.** Each Owner shall pay its Common Facilities Charge monthly in advance (on or before the first day of each month) based on Manager's reasonable estimates, which must be provided to each Owner in writing only once each year and shall be deemed to be in effect until further written notice. Within sixty (60) days following the close of each calendar year, Manager will furnish to each Owner a statement of the actual amount of Operating Costs, the Management Fee, and such Owner's Common Facilities Charge based on actual expenditures for the previous calendar year. If the actual amount of an Owner's Common Facilities Charge is less than the total amount paid by such Owner for such period, the excess will be refunded to

such Owner together with said annual statement. If the actual amount of an Owner's Common Facilities Charge exceeds the amount paid by such Owner for such period, the Owner shall pay to Manager the amount shown as due thereon within thirty (30) days following the receipt of Manager's statement. If at any time or times it reasonably appears to Manager that the amount of such Owner's Common Facilities Charge for the current calendar year will vary from Manager's estimate, Manager may, by written notice to the Owner, revise Manager's estimate for such year, and subsequent monthly payments by the Owner for such year will be based upon Manager's reasonably revised estimate. In the event that the monthly advance payment is not received in Manager's office by the 10th day of each month, a late payment of four percent (4%) of the amount outstanding plus interest at the rate of eighteen percent (18%) per annum shall be applied to the balance due. All costs of collection, including all attorneys' or collection fees, shall be added to the balance due. All Common Facilities Charges, along with late fees and or penalties shall be a lien on the property of each Owner until paid in full.

8.4.4 Audit. Manager's annual statement shall include reasonable detail as to each Operating Cost and the related Management Fee incurred throughout the year. Each Owner shall have the right to audit Manager's records relating to Operating Costs, Management Fees and Common Facilities Charges within one hundred and eighty (180) days after the end of each year upon ten (10) days written notice to Manager. If such audit should reveal an overstatement of actual expenses by three percent (3%) or more Manager shall pay for the reasonable cost and expenses of such audit (but not to exceed \$300.00) and refund any excess amount paid by the Owner within thirty (30) days after written notice thereof.

8.5 Common Facilities Liability Insurance: As a part of the Operating Costs, Manager shall obtain and maintain general public liability insurance insuring Manager and naming the Owners and Developer as additional named insureds against any claims for personal injury, death or property damage occurring in, upon or about the Common Facilities, including contractual liability. Such insurance shall be written with a financially responsible insurer licensed to do business in the State of Utah, and shall contain an endorsement requiring thirty (30) days' written notice to any named insured before cancellation or change in the coverage, scope or amount of the policy. The limits of liability of all such insurance shall be not less than \$2,000,000.00 single liability limit for both personal injury and property damage. If the limits of such insurance become inadequate due to the changes in overall price level or the size of claims being experienced, Manager and the Developer shall negotiate in good faith new limits based on Commercial center industry practices for similarly situated and comparable Commercial centers. At the request of any Owner or Lessee, Manager shall cause a certificate of insurance to be issued and delivered to such person evidencing the insurance required hereunder. If Manager shall not have collected sufficient amounts from occupants of the Commercial Center during prior time periods to pay the premium of the Common Facilities liability insurance, the Owners agree to pay Manager the Owners' relative shares thereof within two (2) weeks of Manager's written demand therefor accompanied by evidence of the premium amount, but not more than two weeks before such premium will be due.

8.6 Manager's Rights: Manager shall have the following rights, among others, in carrying out the Common Facilities Maintenance:

8.6.1 Rules. To establish and enforce reasonable rules and regulations concerning the maintenance, management, use and operation of the Common Facilities, so long

as such rules and regulations do not violate or contradict the terms of this Declaration or any rules and regulations adopted by the Developer;

8.6.2 Close Off Facilities. From time to time to close off any of the Common Facilities to whatever extent required in the reasonable judgment of Manager and its counsel or the Owners to prevent a dedication of any of the Common Facilities or the accrual of any rights by any person or the public to the Common Facilities, provided such closure does not deprive any Owner or Lessee of the substantial benefit and enjoyment of the Commercial Center and further provided any such Owner or Lessee shall be given thirty (30) days prior written notice of such closure.

8.6.3 Construction. From time to time to perform such construction relating to the renewal, restoration, remodelling or replacement of the Common Facilities as is authorized or required of Manager as part of the Common Facilities Maintenance; provided, however that:

8.6.3.1 No such construction shall be performed without the prior, written consent of the Developer as to the nature, manner of proceeding and timing of such construction, which consent shall not be unreasonably withheld, except (i) such prior written consent shall not be required in the case of an emergency, but notice shall be given the Owners in such event as soon as feasibly possible, and (ii) no consent or approval will be required if such construction does not interfere with the business(es) on the affected Parcels.

8.6.3.2 In no event shall the Common Facilities be closed or substantially closed from November 1st to the next January 2nd. No significant construction, repair or maintenance work other than normal maintenance shall be performed in the Common Facilities from November 1st of any calendar year to the following January 2nd without the Developer's and the Developer's prior written consent. The Developer will give its consent if such construction activity will not interfere with their businesses or, if applicable, with business of the occupant of the Parcel in which such Owner has an interest, in such Developer's reasonable judgment. To the extent that work is conducted during such time periods, Manager agrees to minimize the disturbance to businesses in the Commercial Center.

8.7 Conflict Between Declaration and Leases: In the event of any conflict between this Declaration and any leases in the Commercial Center, the provisions of this Declaration shall prevail except as between an Owner and any Lessee(s) and any other occupants of a Parcel and as between the sublessor and sublessees and occupants of a Parcel, in which case nothing contained herein (i) shall excuse the performance of any obligations under the applicable leases, subleases, or occupancy agreements affecting such Parcel, or (ii) shall limit or prevent any Owner from passing on to its Lessees and other occupants of its Parcel or the Parcel in which it has an interest all or some of the obligations accruing to such Owner and/or such Parcel pursuant to this Declaration.

8.8 Maintenance Arrangement in the Absence of a Manager: If and when there shall be no Manager appointed pursuant to this Declaration, each Owner shall maintain, at its expense, the improved Common Facilities from time to time located on its Parcel. Such maintenance shall include, but shall not be limited to, the Common Facilities Maintenance.

ARTICLE IX

INSURANCE FOR THE COMMERCIAL CENTER

9.1 **Hazard Insurance:** Except for those persons who maintain a net financial worth of at least \$200,000,000.00, each Owner shall obtain and maintain "all risk" insurance covering all of the buildings and improvements located on its Parcel, in an amount equal to no less than ninety percent (90%) of the full replacement cost thereof.

9.2 **Liability Insurance:** Except for those persons who maintain a net financial worth of at least \$200,000,000.00, each Owner when development of its respective Parcel occurs shall also obtain and maintain comprehensive public liability insurance covering injuries to persons and property on, in or about its Parcel, with a single limit of not less than Two Million Dollars (\$2,000,000.00) and with a deductible not in excess of Twenty-Five Thousand Dollars (\$25,000.00). All such policies of insurance shall be issued by solvent and responsible insurance companies authorized to do business in the State of Utah, and all such policies shall contain a waiver of the right of subrogation. Each Owner agrees to furnish Manager certificates evidencing the insurance coverage required under this Declaration, upon request. In addition, whenever (i) any loss, cost, damage or expense resulting, directly or indirectly, from fire, explosion or any other casualty, accident or occurrence is incurred by an Owner, and (ii) at the time such Owner is required to be covered in whole or in part by insurance, or is exempt from such insurance requirements pursuant to the terms of this Declaration, with respect to such loss, cost, damage or expense, then such Owner hereby releases each other Owner from any liability the other Owner may have on account of such loss, cost, damage or expense.

ARTICLE X

TAXES

10.1 **Real Estate Taxes:** "Real Estate Taxes" shall mean, with regard to any Parcel, Common Area or Lot: (i) all ad valorem real estate taxes and assessments on the land and improvements comprising the Parcel including any Common Facilities located on the Parcel or Lot (adjusted after protest or litigation), exclusive of penalties; and (ii) the expense of protesting, negotiating or contesting the amount or validity of any real estate taxes, charges or assessments, such expenses to be applicable to the tax calendar year of the Real Estate Taxes contested, protested or negotiated; provided, however, that the following shall not be regarded as "Real Estate Taxes": (i) any franchise, corporate, estate, inheritance, succession, capital levy, or transfer tax of Declarant or Manager, or (ii) any income, profits, or revenue tax, (iii) any other tax, charge, or levy upon the Commercial Center except if imposed in lieu of Real Estate Taxes, (iv) any assessments against the Commercial Center or any Parcel therein, for the initial costs of development of the Commercial Center, which Declarant elects to be placed against the Commercial Center in the form of an assessment or tax payable over a term of years; i.e., sewers initially installed, connection of utilities or fees for connecting to utilities, installation of required traffic control devices, off-site street work, etc., (v) any fees, assessments, tax, levy, charge, or the like imposed against the Commercial Center or any Parcel as a result of or relating to the participation by the City or the RDA in the purchase of or other action taken with respect to the Commercial Center, or (vi) any tax or assessment on rent or other charges payable by any occupant of the Commercial Center under any lease and imposed by state, federal, local or any other regulatory agency except if imposed in lieu of Real Estate Taxes.

10.2 Tax Obligations: Each Owner or Lessee shall pay directly to the tax collector when due the Real Estate Taxes or any other special taxes assessed against the Parcel or Lot in which the Owner has an interest, including the portion of the Common Facilities on such Owner's Parcel or Lot. Each Owner shall have the right to contest the amount or validity of all or any part of said taxes and assessments and to obtain reimbursement from its tenant(s) pursuant to agreement with such tenant(s). In the event of such contest, the contesting person shall prosecute such contest with diligence, shall take such steps as are necessary to avoid a tax sale of its Parcel or Lot and, upon final determination of such contest, shall promptly pay when due the taxes and assessments then due. In the event that the Parcels are not separate tax parcels, Manager shall, to the extent Manager has received payment therefor from the Owners, pay the Real Estate Taxes for all of such Parcels which are not separately assessed and such Real Estate Taxes shall be an element of Operating Costs allocable to and payable by the Owners as set forth in Article VIII.

ARTICLE XI

EFFECT OF SALE OF A PARCEL BY AN OWNER

11.1 Sale by Owner. In the event an Owner sells all or any portion of its interest in its Parcel or Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold or conveyed by it arising under this Declaration after the sale or conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale or conveyance of title and the Parcel or Lot in question shall remain subject to the operation of Articles XII and XIII or other provisions of the Declaration which permit the imposition of a lien and foreclosure of a Parcel or Lot for certain defaults under this Declaration.

11.2 Obligation of New Owner. The new Owner of any such Parcel or Lot or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or Lot or portion thereof or interest therein after the date of sale or conveyance of title or, as applicable, the sale or assignment of interest; provided, however, that the Parcel or Lot in question shall be and remain subject to the operation of Articles XII and XIII or other provisions of the Declaration which permit the imposition of a lien and foreclosure of a Parcel or Lot for certain defaults under this Declaration even if such defaults occurred prior to the date of the sale or conveyance of title or sale or assignment of interest.

11.3 Miscellaneous. Nothing contained herein shall bar or restrict the operation of Articles XII and XIII or other provisions of the Declaration which permit the imposition of a lien and foreclosure of a Parcel or Lot for certain defaults under this Declaration. Notwithstanding the foregoing to the contrary, no Lienholder or purchaser at a foreclosure sale of a mortgage or deed of trust shall be liable for any obligation arising under this Declaration prior to the sale or conveyance of title.

ARTICLE XII

DEFAULTS

12.1 Common Facilities and Other Charges: In the event any Owner fails or refuses to pay when due its Common Facilities Charge or any other amount owed to Manager or any

nondefaulting Owner pursuant to the provisions of this Declaration ("**Nondefaulting Party**," which term shall include Manager), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted by the Nondefaulting Party against the defaulting Owner ("**Defaulting Party**"), which term shall apply to any Owner in default pursuant to the provisions of this Article XII for such amount plus interest from and after the date said bill was due and payable at the Default Rate. Furthermore, the Nondefaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) from the expiration of such ten-day period until paid, for such amount plus accrued interest as set forth above, plus any costs and expenses of pursuing any legal or other action to obtain such amount, including without limitation a reasonable attorneys fee (including without limitation such as may be incurred in any appeal or in bankruptcy court) ("**Collection Costs**," including all such collection costs, expenses, and fees as the Nondefaulting Party may be entitled pursuant to Section 12.4 of this Article).

12.2 Deficiencies. In the event that any Owner shall fail properly to perform Common Facilities Maintenance for Common Facilities or its own premises from time to time located on its Parcel or Lot, or to obtain and maintain insurance, as required by this Declaration, any Nondefaulting Party may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "**Deficiencies**") in the Defaulting Party's providing such insurance or performance of the Common Facilities Maintenance to be performed by it. The Defaulting Party shall have thirty (30) days after receipt of the said notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said thirty (30) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. (If necessary for the safety of the Commercial Center or to prevent a gap in, or a lapse of, any insurance, the thirty (30) day time period referred to above may be appropriately shortened.) In the event that the Defaulting Party shall fail or refuse to correct or to begin and continue diligently thereafter to correct the Deficiencies, as the case may be, the Nondefaulting Party or Manager may, at its option, correct the Deficiencies. In the event that the Nondefaulting Party or Manager shall exercise the said option and shall correct the Deficiencies, the Defaulting Party shall, promptly upon receipt from the Nondefaulting Party or Manager of an itemized invoice for the costs incurred by the Nondefaulting Party or Manager in correcting the Deficiencies, pay all such costs and expenses to the Nondefaulting Party or Manager, together with interest at the Default Rate from the date of the Nondefaulting Party's payment of the same until paid, plus Collection Costs. Furthermore, the Nondefaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) for such amounts.

12.3 Taxes: In the event any Owner fails to pay when due all Real Estate Taxes that the Owner is obligated to pay hereunder, which failure continues for a period of fifteen (15) days after receipt of written notice thereof from any Nondefaulting Party, such failure shall constitute a default, and any Nondefaulting Party or Manager may thereafter pay such Real Estate Taxes if such Real Estate Taxes are delinquent and the Defaulting Party has not commenced and is not duly prosecuting any contest of such taxes. The Nondefaulting Party or Manager shall then bill the Defaulting Party for the expenses incurred. The Defaulting Party shall have fifteen (15) days within which to pay the bill, together with interest at the Default Rate from the date of the Nondefaulting Party's or Manager's payment of the Real Estate Taxes until paid, plus Collection Costs. If the Defaulting Party does not so pay, then the Nondefaulting Party shall have a

Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) for such amounts.

12.4 **Remedies:** In addition to the remedies set forth in this Article XII, in Article XIII, and elsewhere in this Declaration, each person entitled to enforce this Declaration shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any person, shall exclude any other remedy herein or by law provided, but each shall be cumulative.

ARTICLE XIII

LIEN FOR COMMON FACILITIES CHARGES AND OTHER OBLIGATIONS

13.1 **Procedure:** The lien provided for in Section 12.1 above and in Section 14.3.5 below shall be referred to herein as the "**Common Facilities Lien**" and shall only be effective when filed for record by Manager or another Nondefaulting Party as a claim of the Common Facilities Lien against the Defaulting Party's Parcel or interest therein in the office of the Davis County, Utah Recorder. Such claim of the Common Facilities Lien shall contain at least the following:

13.1.1 **Statement.** A reference to this section of the Declaration, and an itemized statement of all amounts due and payable pursuant hereto, except as to Collection Costs, and, for Collection Costs, a statement that such are included in the Common Facilities Lien and will be itemized and specifically set forth at the time of foreclosure;

13.1.2 **Parcel Description.** A description sufficient for identification of that Parcel in which the Defaulting Party has an interest and which is the subject of the Common Facilities Lien;

13.1.3 **Owner.** The name of the Owner or reputed Owner of the Parcel which is the subject of the Common Facilities Lien;

13.1.4 **Defaulting Party.** The name of the Defaulting Party and the extent of the Defaulting Party's interest in the Parcel if the Defaulting Party is other than the Owner; and

13.1.5 **Nondefaulting Party.** The name and address of the Nondefaulting Party.

13.2 **Priority:** The Common Facilities Lien, when so established against the Parcel described in the claim of the Common Facilities Lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such Parcel after the time of filing the Common Facilities Lien; provided, however, that notwithstanding the foregoing, Common Facilities Liens shall in all cases be subordinate to each first mortgage/deed of trust lien that encumbers a Parcel from to time (*i.e.*, a mortgage or deed of trust that is given by the Owner of a Parcel and/or the Owner of improvements on a Parcel, that secures repayment of a loan and that is in a first priority position as to voluntary liens). The Common Facilities Lien shall be for the use and benefit of the Nondefaulting Party having a right thereto pursuant to this Declaration and may be enforced and foreclosed as a mortgage in a suit or action brought in any court of competent jurisdiction.

ARTICLE XIV

INDEMNITY

14.1 Subrogation Waiver; General Indemnity: To the extent that any liability of an Owner or Lessee to another Owner or Lessee or employees, agents, contractors, invitees, tenants, subtenants, successors and assigns is covered by insurance, each Owner or Lessee respectively waives all rights of subrogation against the other Owners or Lessees for claims payable under the property coverage portions of said insurance.

14.2 Indemnification: Subject to the provisions of Section 14.1, each Owner and Lessee hereby agrees to indemnify, defend and hold harmless the other Owners, Lessees and occupants from and against any and all liabilities, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any building or Service Facilities constructed on the indemnifying Owner's or Lessee's Parcel or Building Area, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its tenants, subtenants, agents, contractors or employees.

14.3 Hazardous Substances: Each Owner agrees as follows with respect to its Parcel(s):

14.3.1 Care of Parcel. The Owner shall not use, produce, store, release, dispose or handle in or about its Parcel or transfer to or from its Parcel (or permit any other person under its control to do such acts) any Hazardous Substance except in compliance with all applicable Environmental Laws. No Owner shall construct or use any improvements, fixtures or equipment or engage in any act on or about its Parcel that would require the procurement of any license or permit pursuant to any Environmental Law, except for (i) the routine use and sale of substances necessary to the use and occupancy of the Parcel; (ii) the pursuit of the Owner's or occupant's business on the Parcel; and (iii) for the sale to the public of substances generally handled in businesses similar to the Owner's or occupant's business, so long as the requisite licenses or permits are obtained and maintained.

14.3.2 Definitions. In this Declaration the term "**Environmental Laws**" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene, or the environment, including without limitation the federal Comprehensive Environmental Response, Compensation, and Liability Act; and the term "**Hazardous Substance**" shall mean all substances, materials and wastes that are or become regulated or classified as hazardous or toxic, under any Environmental Law.

14.3.3 No Knowledge. To the best of the Owner's knowledge after reasonable inquiry, the Owner represents and warrants the following to the other Owners with respect to its Parcel. The representation and warranty shall be effective first at the time the Owner acquires an interest in its Parcel and shall continue while the Owner holds an interest in its Parcel. If at any time the representation or warranty is inaccurate, the Owner shall immediately give written notice thereof to the other Owners. The representations and warranties are:

14.3.3.1 Except as permitted by Environmental Laws, including, without limitation, small quantities of solvents used in cleaning grills on the Lion's Den Parcel,

there are no Hazardous Substances or regulated substances thereon or to be installed thereon, whether contained in barrels, tanks, equipment (movable or fixed) or other containers; deposited or located in land, waters, or sumps; or incorporated into any structure or in any other part of the Parcel.

14.3.3.2 No asbestos-containing materials have been or will be installed or affixed to the structure on the Parcel at any time in violation of any Environmental Laws.

14.3.3.3 The Parcel and all operations thereon are not in violation of any Environmental Laws, whether they govern the existence, clean-up and/or remedy of contamination from any Hazardous Substance or regulated substances, and no governmental entity has served upon such Owner any notice claiming any violation of any such statute, ordinance or regulation.

14.3.4 Notification. If any Owner becomes aware of any condition relating to the existence, release or threatened release of any Hazardous Substance or violation of any Environmental Law on its Parcel, the cure or remediation of which is required by law or dictated by commercially reasonable business practices, such Owner shall promptly notify the other Owners and Developer in writing thereof and shall promptly cure or remediate such condition.

14.3.5 Right to Cure. If any Owner (a Defaulting Party) fails to perform its duty to cure or remediate as set forth herein, a Nondefaulting Party may proceed to cure after thirty (30) days written notice and failure of the Defaulting Party to commence, and thereafter diligently to prosecute, such cure, and the Nondefaulting Party shall be entitled to a reimbursement of all costs incurred in effecting such cure together with interest at the Default Rate from the date such costs were paid, plus Collection Costs. Furthermore, the Nondefaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) for all such amounts. In case of an emergency, the person becoming aware of the condition shall attempt reasonable efforts to notify the person with the duty of cure of the condition requiring attention; however, any person may in such emergency, without notice, proceed in good faith to effect a cure, giving such notice later as soon as possible.

14.3.6 Indemnity. The Owner of each Parcel agrees to indemnify, defend and hold harmless the other Owners, Manager, Developer and occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, relating to or connected with any of the foregoing mentioned in this Section 14.3, for injury to or death of any person or damage to or destruction of any property occurring on or originating from said Owner's Parcel or arising out of the act or omission of such Owner, its tenants, subtenants, employees, agents, contractors, representatives and their successors and assigns, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its agents, contractors or employees.

ARTICLE XV

VOTING

15.1 Owners of Lots and Parcels. Declarant hereby grants to the Developer and the Owners the voting rights as provided herein.

15.2 **Voting Rights.** Voting rights required under this Agreement are to be administered on a majority rule basis as voted by the Developer and the Voting Representatives. The Developer having one vote and the Voting Representative, if any, of the Owner of each Parcel or Lot shall have one vote. Notwithstanding anything to the contrary herein, in order for a vote to be binding and effective, the Developer must vote with the majority. Failure of the Developer to vote with the majority shall cause the vote to fail.

ARTICLE XVI

EXPANSION

16.1 **Expansion.** In the Declarant's sole and absolute discretion and on one or more occasions, Declarant may amend the Declaration unilaterally so as to admit all or any part of the Expansion Area into the Park Lane Commons, subject to the following terms and conditions:

16.1.1 **Amendment.** The admission shall be evidenced by an amendment to the Declaration that (i) refers to this Section, (ii) sets forth a legal description of the Expansion Area being admitted, (iii) subjects the admitted Expansion Area and the Owner of the Expansion Area to all of the terms and provisions of the Declaration; (iv) modifies the Site Plan to reflect Building Limit Lines, Building Area, permissible Floor Area and Common Facilities within the Expansion Area, in accordance with this Section; (v) is signed and acknowledged by Declarant and the Owner of fee simple title to the admitted Expansion Area; and (vi) is recorded in the office of the Davis County, Utah Recorder.

16.1.2 **Existing Liens.** The Lienholder of any financing instruments encumbering the admitted Expansion Area must subordinate the lien of such instruments to this Declaration. All real property taxes against the admitted Expansion Area must be current.

16.1.3 **Effect of Admission.** From and after the date of the recording of the amendment described in Section 17.1.1, the admitted Expansion Area shall be treated in all respects as part of the Park Lane Commons and the same shall be subject to the terms and provisions of this Declaration.

16.1.4 **Site Plan.** Declarant shall modify the Site Plan in its sole and absolute discretion, so long as said modification is in accordance with City approved PMP Process.

16.2 **Allocation of Assessments and Voting Rights Following Expansion.** Each Lot or Parcel created shall be apportioned a share of the Common Area Expenses attributable thereto, as provided in this Declaration. Each Owner of a Lot or Parcel shall be entitled to vote as specified in the Amendment or Supplemental Declaration. Assessments imposed by the Master Association and voting rights shall commence as of the date the Declarant executes a Supplemental Declaration.

16.3 **No Obligation to Expand.** Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to Park Lane Commons of any or all of the Expansion Area; (ii) the creation or construction of any Lot, Parcel or other Improvement; (iii) the carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Expansion Area. Except to the extent

specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done on or relative to the Expansion Area or any portion thereof shall be binding as to such of the Expansion Area as is never added to Park Lane Commons.

16.4 Easements with Expansion Area. From time to time, Declarant, in its sole discretion, (i) may obtain grants of easements from the owners of the Expansion Area for purposes of access, utilities, landscape maintenance, fire sprinkler systems or otherwise for the benefit of the Commercial Center, which by reference to this section shall constitute part of the Restrictions benefiting the Commercial Center; and (ii) may grant similar easements across Common Facilities owned by Declarant for the benefit of the Expansion Area; provided, however, that such easements may not interfere with the Restrictions. Notwithstanding any provisions in this Declaration to the contrary, Declarant may grant temporary or permanent easements to provide access through the development from public roads adjacent to the Commercial Center, which easements may burden driveways in the Common Facilities.

16.5 Expansion for Residential Purposes. Declarant contemplates that it is possible that the Park Lane Commons could be expanded to include property to be used for multi-family housing under the concept of PUD, multi-family apartments, or residential condominium or a combination of any of the above. In connection with the possible contemplated expansion for residential use, it is understood and agreed that a Supplemental Declaration may be submitted for recordation to amend this Declaration. Such Supplemental Declaration may include a declaration of a PUD, apartment complex or residential condominium arrangement for the residential Lots or Parcels in question. Declarant expressly reserves the right to create such residential Lots or Parcels without committing or being obligated to establish the same in the future. Any such Supplement Declaration, if submitted, may include appropriate and typical provisions applicable to residential projects, including but not limited to, limitations on use, the imposition of assessments, special assessments and liens on such residential Lots or Parcels, mechanisms to assess and collect a share of Operating Costs, Management Fees and Common Facilities charges at Park Lane Commons, the application of the Design Guidelines and Development Guidelines to the residential Lots or Parcels, the requirement that the development of any Improvements on such residential Lots and Parcels shall be subject to the prior approval of the Developer, and such additional covenants, conditions, restrictions and easements as may be customary in residential developments.

ARTICLE XVII

DEVELOPER REVIEW PROCESS

17.1 Establishment of Developer Review Process. There is hereby established a Developer Review Process which shall be responsible for the establishment, administration and enforcement of the Design Guidelines and to carry out all other responsibilities assigned to the Developer in order to carry out the purposes and intent of this Declaration. The Developer shall also administer, in conjunction with the Declarant, the PMP Process which shall be completed on a Parcel by Parcel basis.

17.1.1 The Developer shall exercise its reasonable judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot or Parcel, height, grade and

finished ground elevation, and all aesthetic considerations set forth in this Declaration, Development Guidelines or in the Design Guidelines as they are submitted to the PMP Process.

17.1.2 The Developer shall exercise its reasonable judgment to see that each development of a Lot or Parcel, including but not limited to the roadways and major infrastructure, are in compliance with the Development Guidelines.

17.1.3 Except for capital improvements made by Declarant, no improvement on a Lot or Parcel shall be erected, placed or altered on any Lot or Parcel, nor shall any construction be commenced until plans for such Improvement shall have been approved by a majority of the Developer; provided, however, that Improvements and alterations which are completely within a building may be undertaken without such approval.

17.1.4 The actions of the Developer in the exercise of its discretion by its approval or disapproval of plans and/or other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

17.2 **Expenses.** All expenses of the Developer in performing its duties under this Declaration shall be a cost of the Common Facilities and included for reimbursement in its operating budget as Operating Costs. The Developer shall have the right to charge a fee for each application submitted to it for review, in an amount to be established by the Developer from time to time.

17.3 **Design Guidelines and Rules/Development Guidelines.** The Developer shall adopt, establish and publish from time to time Design Guidelines. The Design Guidelines shall define and describe the design standards for Park Lane Commons and the various uses within Park Lane Commons. The Design Guidelines may be modified or amended from time to time by the Developer. To the extent permitted by the Design Guidelines, the Developer, in its sole discretion may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Park Lane Commons design review process is not a substitute for compliance with the applicable Farmington City or other Municipal Authority building, zoning and subdivision regulations and requirements, and each owner is responsible for obtaining approvals, licenses, permits as may be required prior to obtaining final approval of any Improvements from the Developer and prior to commencing construction. The Development Guidelines shall be subject to modification or amendment by the Developer, as approved by the City. The initial Development Guidelines shall be established solely by the applicable Municipal Authority and the Declarant. However, the Developer shall have authority to excuse matters of noncompliance or permit nonmaterial variances in connection with any requirements of the Development Guidelines, or amend them in the future as approved by Declarant and the City.

17.4 **Limitation of Liability.** The Developer and Manager shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Developer or Manager, nor any individual member of the Developer or Manager shall be liable to any person for any official act of the Developer or Manager in connection with submitted plans and specifications unless such person has acted with gross negligence or was guilty of willful misconduct. In all events the Developer and Manager shall be defended and indemnified by the owners of Park Lane Commons from any damage, suit or proceeding which may arise by reason of the Developer's or Manager's decision(s). Provided, however, that no such indemnification shall be effective to the extent that a member of the Developer or Manager shall

have been adjudged to be liable for gross negligence or willful misconduct in the performance of their duty as a member of the Developer or Manager, unless in such case the court determines that such person is fairly and reasonably entitled to indemnification for such expense as the court shall deem proper.

ARTICLE XVIII

CONDEMNATION

If at any time or times all or any part of the Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Facilities in lieu of condemnation but under threat of condemnation shall be deemed to be a taking by eminent domain. All compensation, damages, and other proceeds from any such taking by power of eminent domain ("**Condemnation Award**") attributable to the value of any land within the Common Facilities shall be payable only to the Owner thereof (and its assigns, as per lease or otherwise) and no claim thereon shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Facilities so taken to the extent of any damage suffered by their respective Building Areas resulting from severance of the appurtenant portions of the Common Facilities so taken. The Owner of the portions of the Common Facilities so condemned shall promptly repair and restore the remaining portion of the Common Facilities so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Facilities so condemned less said Owner's costs associated with the condemnation, including but not limited to attorneys' fees and court costs arising out of the condemnation proceedings.

ARTICLE XIX

GENERAL PROVISIONS

19.1 Covenants Run With the Land: Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run perpetually with the land.

19.2 Successors and Assigns: This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners and Developer, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise, to the extent that the foregoing is consistent with the provisions of this Declaration. With respect to rights in or to any Parcel which have been severed from the rights or estates owned by Declarant pursuant to the terms of this Declaration, Declarant intends that such rights remain severed notwithstanding that during any time in which this Declaration is in effect Declarant or any other person may own the underlying estate or servient estate as well as the lesser right or dominant estate, respectively, so that Declarant's purposes in making this Declaration, as listed in the recitals, may be served, and any doctrine of merger of estates, or principle of law having similar effect, shall not apply to

diminish any right hereunder or combine any right created or severed hereunder with any other estate or interest.

19.3 Duration: Except as otherwise provided herein, the term of this Declaration shall be perpetual.

19.4 Injunctive Relief: In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, the Manager and any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

19.5 Modification and Termination: Except as otherwise provided in this Declaration, this Declaration may not be modified in any respect or terminated, in whole or in part, except with the consent of the Declarant, and then only by written instrument duly executed and acknowledged by Declarant and recorded in the office of the recorder of the Davis County Recorder. No modification or termination of the Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

19.6 Method of Approval: Except as otherwise provided in this Declaration, whenever consent or approval is required under this Declaration, such consent or approval must be unanimously given by the other person or persons from whom consent is required. The person requesting approval or consent (the "**Requesting Person**") shall give notice in writing to the person or persons whose consent or approval is required (the "**Approving Person**"). Within thirty (30) days after receipt of said written request, each Approving Person shall notify the Requesting Person whether or not such consent or approval is granted. In the event that the Approving Person does not provide notification to the Requesting Person within thirty (30) days from the date of receipt of notice, then the Approving Person shall be deemed to have granted consent or approval. Notwithstanding the above, this Section 19.6 shall not be interpreted to permit a modification or termination of this Declaration without the express written consent of Declarant as provided in Section 19.5 and in such situation the failure to respond or notify any Requesting Person shall not be deemed an approval or consent thereto. Approval of any act, plan, budget, or any other item or fact under this Declaration shall not constitute a waiver of any requirements, duties, or obligations of any person under this Declaration.

19.7 Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

19.8 Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any Owner or Lessee to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner or Lessee may have hereunder by reason of any breach of this Declaration. Any breach of the Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

19.9 Default: A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (unless another period is specified elsewhere in this Declaration

with regard to a specific kind of default, such as for example, a payment of money, or a payment of taxes, from receipt of written notice from any Owner, Lessee or the Manager specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (or other such period as is elsewhere specified), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period (or other specified time period) and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

19.10 Notices:

19.10.1 Method of Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Commercial Center is located. All notices to Declarant and/or Developer shall be sent to the person and address set forth below:

Declarant/Developer: The Haws Companies
1200 West Red Barn Lane
Farmington, Utah 84025
Attn: Scott Harwood and Richard A. Haws

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

19.10.2 Receipt. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 19.10.1 above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to Section 19.10.1 above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending person.

19.11 Waiver: The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

19.12 Attorneys' Fees: In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal).

19.13 Severability: If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of

this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

19.14 Not a Partnership: The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

19.15 Third Party Beneficiary Rights: This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

19.16 Captions and Headings: The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

19.17 Entire Agreement: This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

19.18 Construction/Conflict: In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. If there is any conflict on matters of the same subject between or among the Governing Documents and any additional covenants, restrictions or the governing documents or policies adopted by any Neighborhood Association for portions or parcels of the Project, the Governing Documents shall control.

19.19 Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

19.20 Recordation: This Declaration shall be recorded in the office of the Davis County, Utah Recorder.

19.21 Counterparts: For the convenience of the parties, this Declaration may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement shall be effective when one or more of such counterparts has been executed by each party and delivered. Signature pages from any counterpart may be assembled with signature pages from other counterparts, and a single original, with assembled signature pages, shall constitute a final, complete document and may be recorded.

19.22 Application to Leases/Licenses. The Governing Documents apply to all Owners and occupants of property within Park Lane Commons and to their respective tenants, guests and invitees. If any property is leased, or if rights are given occupy by license, the lease or license shall provide that the tenant and all occupants of the leased or licensed property are bound by and obligated to comply with the Governing Documents.

19.23 **Exhibits.** The following Exhibits are attached and part of this Agreement:

Exhibit "A" – Property included under the Declaration

Exhibit "B" – Site Plan with Building Areas

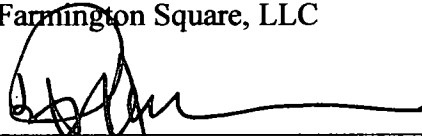
Exhibit "C" – Signage Plan

19.24 **Supplemental Declaration.** Nothing in this Declaration shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Park Lane Commons from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and in such case, the more restrictive shall control.

EXECUTED as of the day and year first above written.

DECLARANT(s):

Farmington Square, LLC

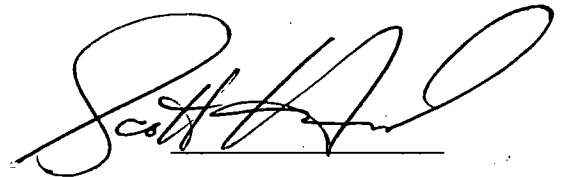


Richard A Haws, Manager

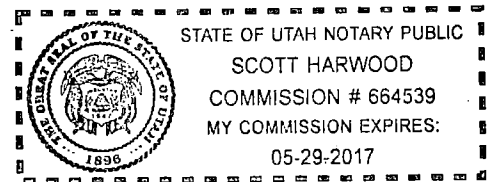
STATE OF UTAH)

COUNTY OF DAVIS)

On this 7th day of JULY, 2015, before me, a notary public, personally appeared RICHARD A. HAWS, who being duly sworn, did say that he is the Manager of Farmington Square, LLC, a Utah Limited Liability Company, and acknowledged to me that he executed the same for the purposes therein stated.

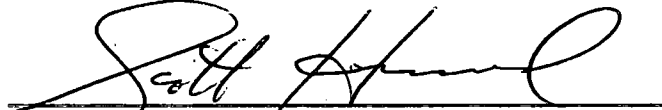


NOTARY PUBLIC



DEVELOPER:

The Haws Companies, a Utah Corporation

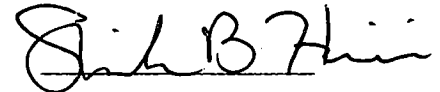


Scott W. Harwood, President

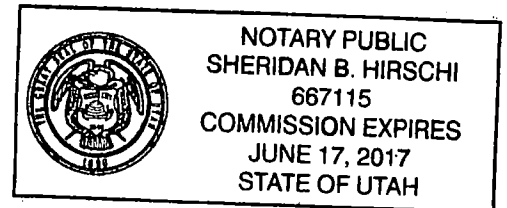
STATE OF UTAH)

COUNTY OF)

On this 8th day of July, 2015, before me, a notary public, personally appeared SCOTT W. HARWOOD, who being duly sworn, did say that he is the President of The Haws Companies, a Utah Corporation, and acknowledged to me that he executed the same for the purposes therein stated.



NOTARY PUBLIC



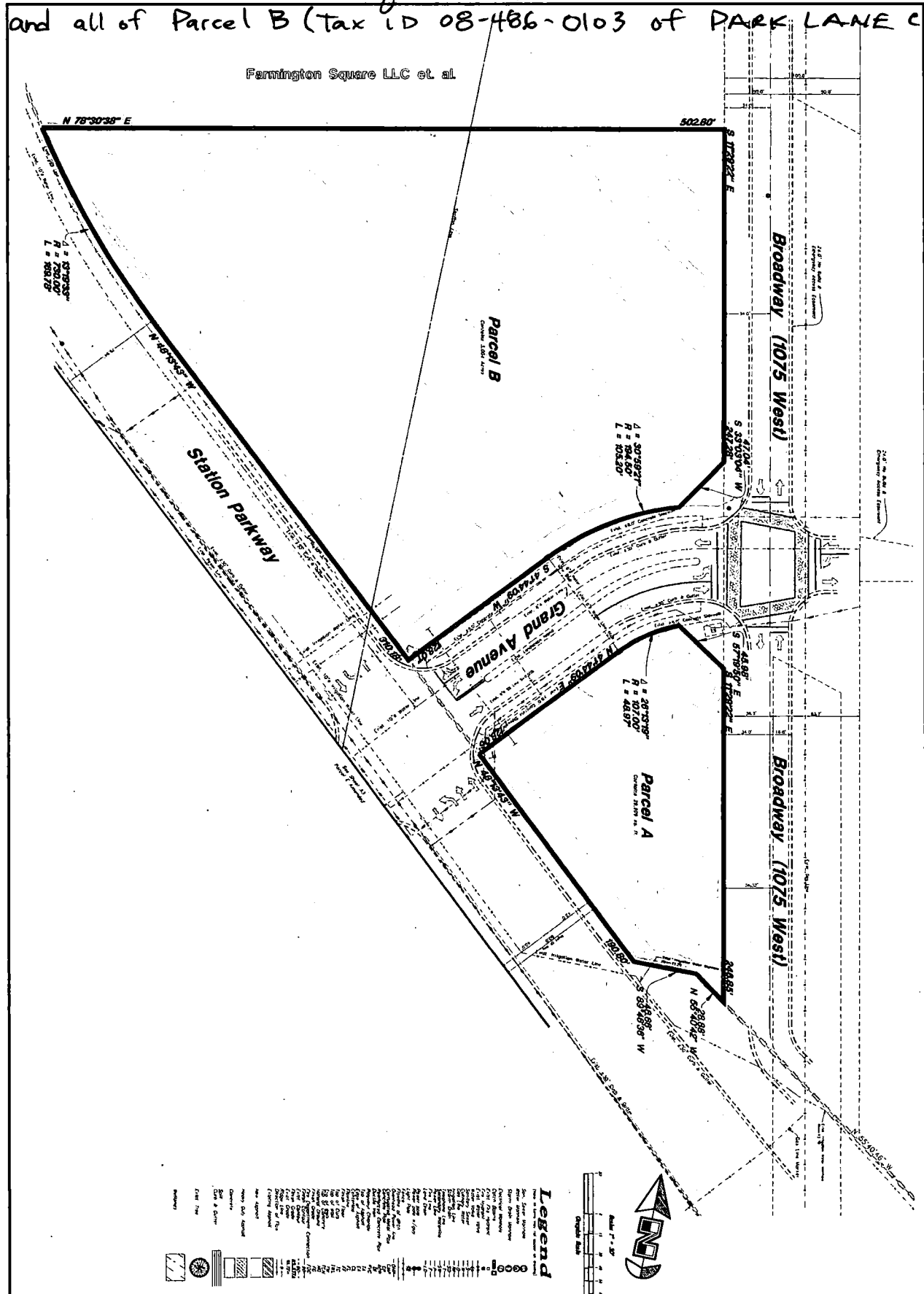
**EXHIBIT A
TO
MASTER DECLARATION**


Parcel Map Illustrating the Area to be Govern by the Declaration

" EXHIBIT A "

LEGAL DESCRIPTION: ALL of Parcel A (Tax ID 08-486-0102)
and all of Parcel B (Tax ID 08-486-0103 of PARK LANE COMMONS

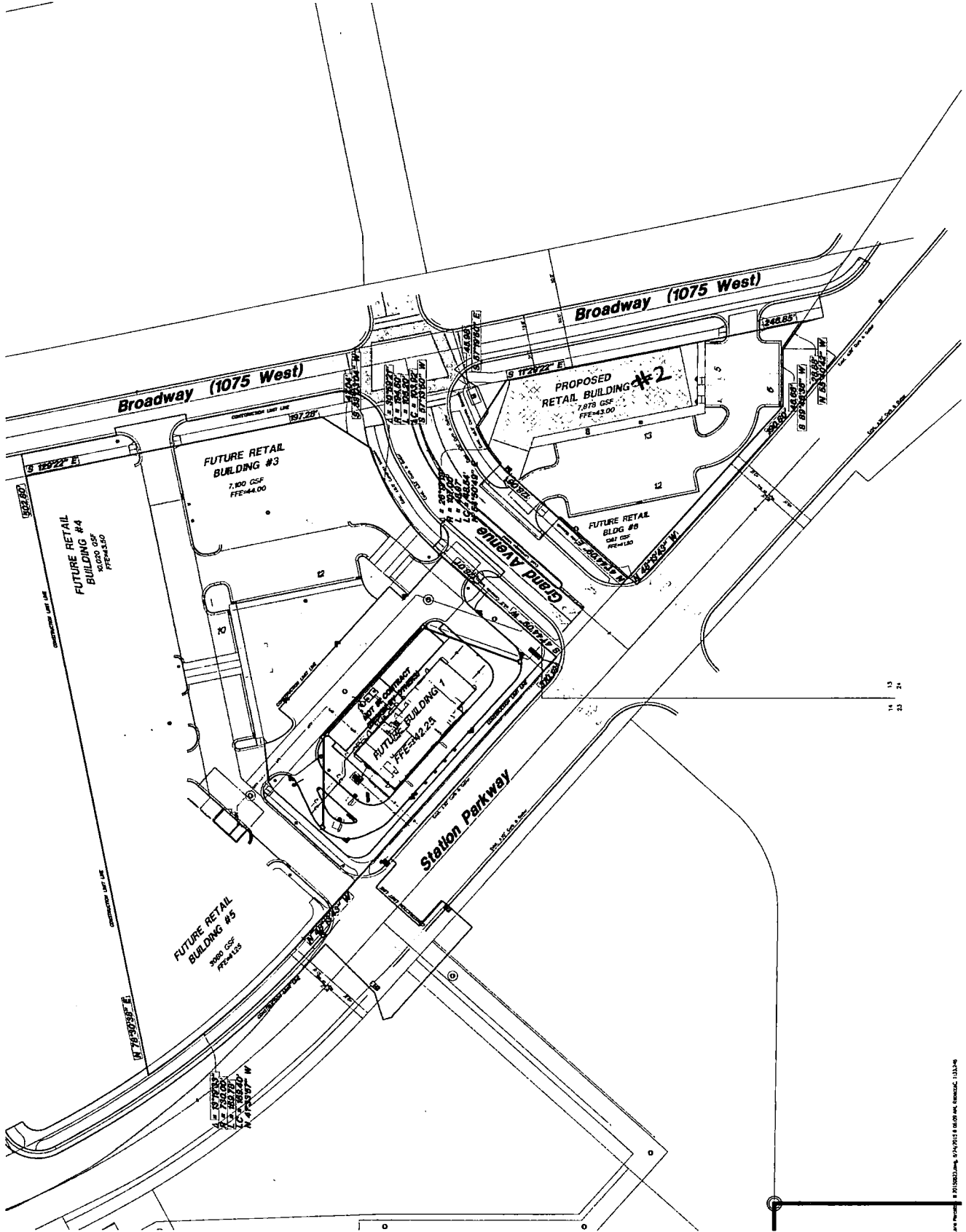
1:11 (Scale) - See Survey for Details - 11/11/2013



A2 <small>24 Dec 2013</small> <small>1:11 (Scale)</small>	ALTA-ACSM Land Title Survey Red Barn Recovery <small>475 North Station Parkway Farmington City, Davis County, Utah A part of Section 13, 14, 23, & 24, T14N, R11W, S188M, U.S. Survey</small>	 GREAT BASIN ENGINEERING INC <small>5746 SOUTH 1475 EAST OGDEN, UTAH 84403 MAIN (801) 234-4415 FAX (801) 234-0222 FAX (801) 234-7544 WWW.GREATBASINENGINEERING.COM</small>	<table border="1"> <tr> <td>REV</td> <td>DATE</td> <td>DESCRIPTION</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	REV	DATE	DESCRIPTION						
	REV	DATE	DESCRIPTION									
<small>1:11 (Scale) - See Survey for Details - 11/11/2013</small>		<small>Checked due to Updated File Report JVS/PTW</small>										

**EXHIBIT B
TO
MASTER DECLARATION**

Site Plan



**EXHIBIT C
TO
MASTER DECLARATION**

Signage Plan

PARK LANE COMMONS

SIGNAGE CRITERIA
FARMINGTON, UTAH
As of: 6.15.2015

SIGNAGE CRITERIA Table of Contents

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1.1 Project Description

Park Lane Commons, developed by The Haws Companies (the “Developer”) is a themed mixed-use development that encourages multi modal transportation with accommodations for pedestrians, bicycles and vehicles.

The planning intentionally creates “people spaces” that are open and inviting, with a consistent theme of architectural design and landscaping . The main central plaza or Marketplace faces Station Parkway and Grand Avenue and celebrates its connection to the public pathway system encouraging hikers and bikers to pass through or linger in designated plaza spaces throughout the project. Depending on the day and time, this Gathering-places may be either active with a Farmers’ Market; passive with shaded gathering areas; or transitory acting as a connection for the trail system to future medium density residential development to the north. The main plaza and surrounding plazas become a pleasant venues to enjoy outdoor dining complementing the surrounding commercial ventures as well as serving as a rest stop for commuters who have taken advantage of the proximity to the commuter rail and pathway system.

This “Gathering-places” and, for that matter, the whole district receives identity in the form of stone columned rail fencing, the water falls, decorated colored concrete, themed landscaping and seating areas. The site planning also includes development of a vernacular of queuing with a “signage gateway” that features the entrance off of Station Parkway along with scaled entry elements at other ingress points. The intent being to create a harmonious blend of mixed uses to complement the recently completed residential units nearby and the future development to come by providing connections and walkability for all users.

The commercial development will include food venues, retail shops and professional offices. The theming of the architecture will be a mix of contemporary and traditional building forms and organization, treated with “retro” finishes including over-grouted stone and masonry, horizontal siding, corten steel roofing and siding, heavy timber construction and the like.

The build-out of the structures establishing this pattern will occur in phases, with individual applications made for each building as the market place allows for their development, there may be minor variations and flexibility in the final design to each of these buildings based on the actual tenants needs.

1.2 Glossary of Terms

The following terms referred to in this sign criteria are defined as follows:

Animated Sign

A sign with action or motion, moving characters, changing colors, or change of light, which require electrical energy, but not including wind actuated elements, such as flags or banners.

Back Door Signs

Signs placed on the back entrance of Tenant's lease premises for purposes of delivery and access.

Copy Area

The area of a sign, exclusive of margins, in which copy and graphics may be placed. Copy area shall be computed by surrounding each graphic element with a regular geometric shape (e.g., circle, rectangle, trapezoid, ellipse), calculating the area contained within the shapes and then computing the sum of the areas. Minor elements such as swashes, simple lines, or other decorative touches that might extend beyond the limits of the geometric shape shall not be included as part of the copy area.

Customer Entry Area

The area up to (5') five feet on each side of the customer entry doors and extending perpendicular no further than (10') ten feet from the doors.

External Illumination

A light source mounted directly above or mounted on, the same wall surface as the sign it illuminates.

Flashing Sign

A sign, the illumination of which is not kept constant in intensity at all times when in use and exhibits sudden or marked changes in lighting effects.

Freestanding Sign

A sign supported by an upright brace or a sign, which is affixed to a base that is permanently attached to ground and wholly independent of any building for support.

Horizontal Band / Storefront Sign Band

Refers to a horizontal architectural building plane designated as a background for signage.

Internal Illumination Channel Letter

A sign designed to provide artificial light from a source within such sign, including neon and exposed lamp signs. Pin mounted letters are encouraged.

Letter Height

Letter height shall be determined by measuring the normal capital letter of a type font exclusive of swashes, ascenders, and descenders.

LOGO

An image composed of a collection of symbols, figures and design elements which together form a distinct and unique identifying mark. Logo heights for signs are regulated when they appear separately from, but are associated with the sign lettering.

Open Field

Open field refers to a building plane larger than the typical horizontal sign band height that provides a background for signage and is delineated by architectural features such as rooflines, archways, storefront glazing or building edges. An open field may be comprised of two or more horizontal bands.

Operational Signs

Operational signage indicating hours of operation, telephone numbers, specialty rules and regulations specific to each tenant, typically placed on the glazing of the entry door or nearby adjacent display window.

Real Estate Sign

A temporary sign advertising the sale, rent or lease of property on which it is located.

Rotating Sign

A sign designed to revolve or rotate in any manner whether by electrical power or other.

Sign

Any name, identification, description, display, illustration or device which is affixed to directly or indirectly upon a building structure or land in view of the general public and which directs attention to a product, place, activity, person, institution, or business.

Sign Face Area

The area that is allocated for sign placement, including margins, that is designated by the Committee as being available for display of copy and graphic.

1.3.2 Number of Signs

Section 1.4 establishes the number and type of signs permitted by signage district. Tenants and their designers are to refer to that map and select a combination of at least two sign types, and no more than four, from the designated district assigned to their leased premises. Blade signs oriented to the Promenade do not impact the total number of sign types.

1.3.3 Location

Signs may be located adjacent to entries or storefronts only, unless otherwise indicated in building elevations provided by the Developer.

Refer to the Developer's sign plans and elevations for approved sign locations and size requirements.

The specific area of placement of each tenant sign is indicated on the building elevations. The Developer, prior to installation must approve variations from these designated areas. The maximum allowable square footage area of each sign is to be determined based on the size of the store and its location within the project.

1.3.4 Content

Signs that incorporate creative logos or graphic elements along with the business identity are encouraged.

Store name to consist of "Trade Name." Tag lines, bylines, merchandise or service descriptions are allowed with the permission of the Developer.

Signs, copy and graphic elements shall fit comfortably into sign area, leaving sufficient margins and negative space on all sides. Wall signs shall appear balanced and in scale within the context of the sign space and the building as a whole. Thickness, height, and color of sign lettering shall be visually balanced and in proportion to other signs on the building. In all cases, the copy area shall maintain a margin at least (3") three inches from any edge of the sign face area. In any event the Developer shall have sole and absolute discretion as to any and all signage approval.

1.3.5 Illumination

Where signs are internally illuminated, light-transmitting surfaces shall be non-gloss, matte materials.

Only letters and logos shall transmit light while background remains solid opaque. No illuminated backgrounds or boxes are allowed, unless otherwise approved by Developer.

Lighting for all tenant signs shall be turned off after closing or reduced between the hours of 12:00 a.m. and 6:00 a.m.

All exposed or skeletal neon must be backed with an opaque coating, and be approved in writing by the Developer. All housings and posts for exposed neon signs must be painted out to match the sign background immediately behind.

1.3.6 Color and Materials

Dimensional letters and plaques shall be affixed without visible means of attachment, unless attachments make an intentional design statement and are approved by the Developer. Color of letter returns are to contrast with building colors for good daytime readability.

The interior of open channel letters shall be painted dark when against light backgrounds. Sign colors are to provide sufficient contrast against building background colors and are to be varied from the adjacent tenants. Acceptable sign material treatments include:

- Dimensional geometric shapes coated or burnished for variety in color and texture.
- Painted Metal.
- Screens, grids, or mesh.
- Etched or polished metal.
- Cut, abraded, or fabricated steel.
- Dimensional letterforms with seamless edge treatments.
- Natural opaque hard surface materials with matte finish.
- Glass

1.3.7 Temporary Signs

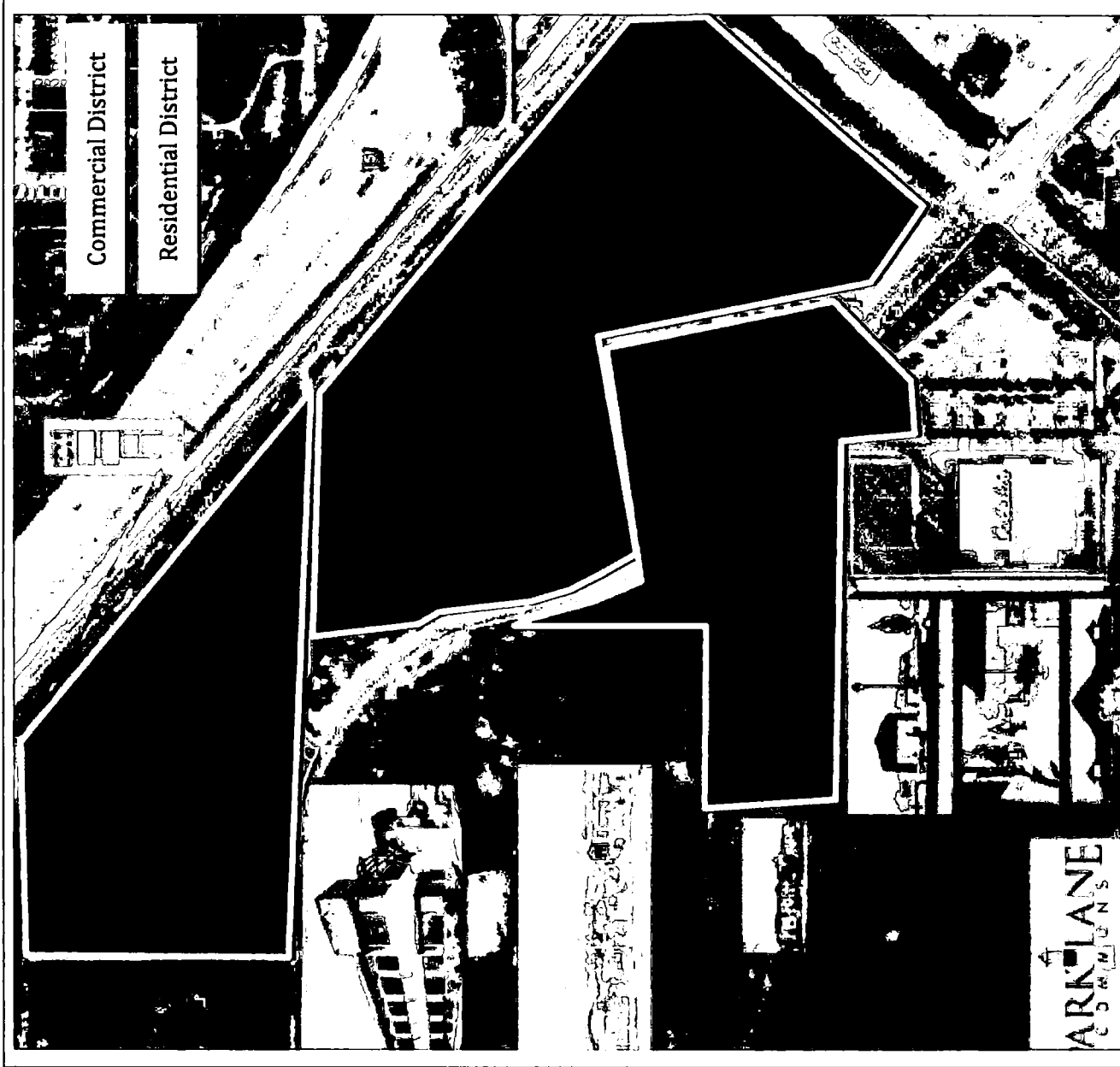
Temporary Grand Opening signs will be allowed in accordance with Developer's approval only, which must be in writing. See Developer's Tenant Coordinator for specific signage requirements. These criteria will not prevent granting of

temporary special permit or otherwise permitting signs advertising or pertaining to any civic, charitable or special event of general public interest that takes place within the City when it can be found that such signs will not be materially detrimental to the public welfare, interest or safety, nor injurious to adjacent property.

1.3.8 Interior Signs

Signs suspended behind the storefront glazing system, visible from the outside of the store, shall not exceed (10%) ten percent of the total glass area of the storefront. Signs shall be suspended a minimum of (12") twelve inches from glass and professionally designed and reproduced. These signs are excluded from signage area calculation formula. All interior signage that is visible from the exterior must be approved in writing by Developer.

1.4 Signage Districts



1.4.1 Commercial Mixed Use

This district emphasizes commercial uses. The activities range from Retail and Restaurant to professional office. The intent is to allow tenants to announce their presence in a manner that preserves the character and theming of the surrounding site. See the Signage Table for dimensional parameters and other requirements.

1.4.2 Residential Mixed Use District

Not A Part.

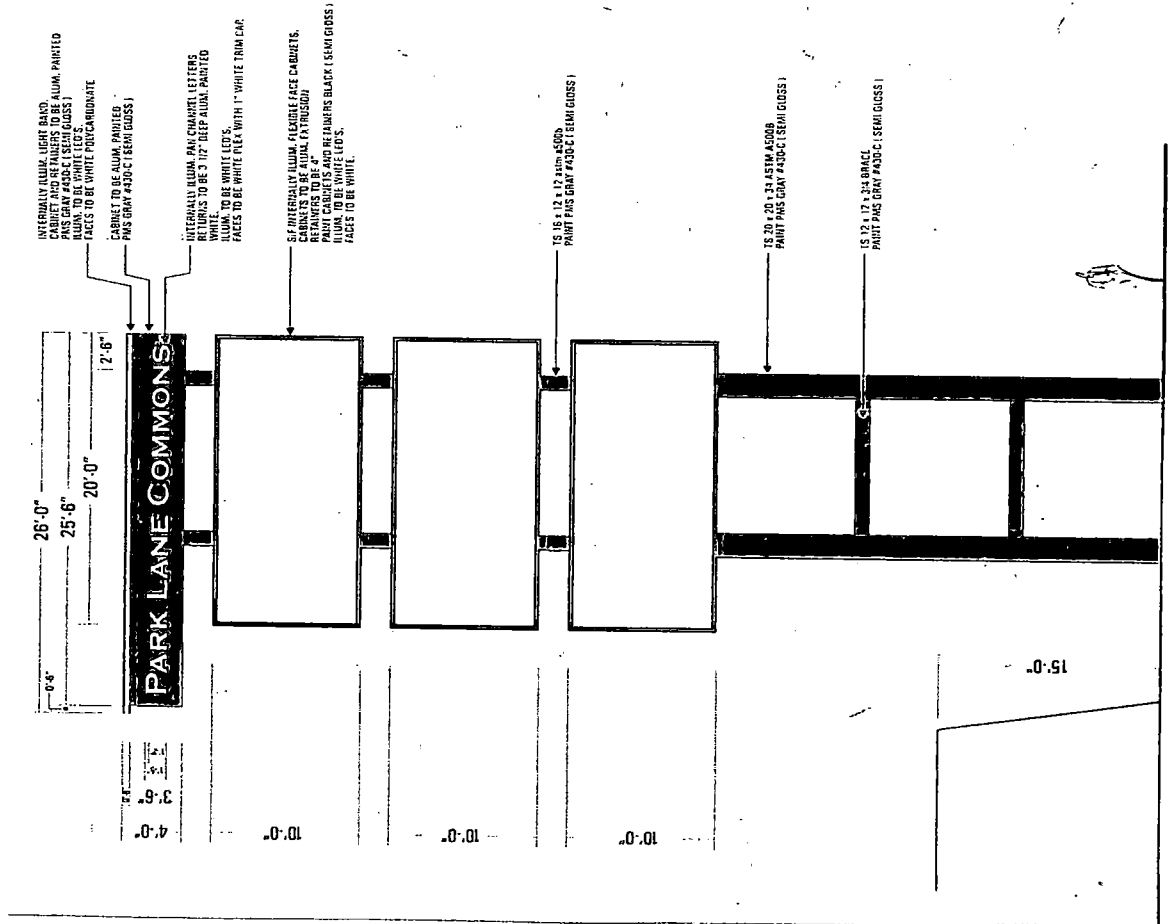
1.4.3 Promenade Overlay

As described in the Farmington city ordinance and regulating plan, Cabela's Drive is a designated promenade. Signage is to address pedestrians, bikes and slow moving cars.

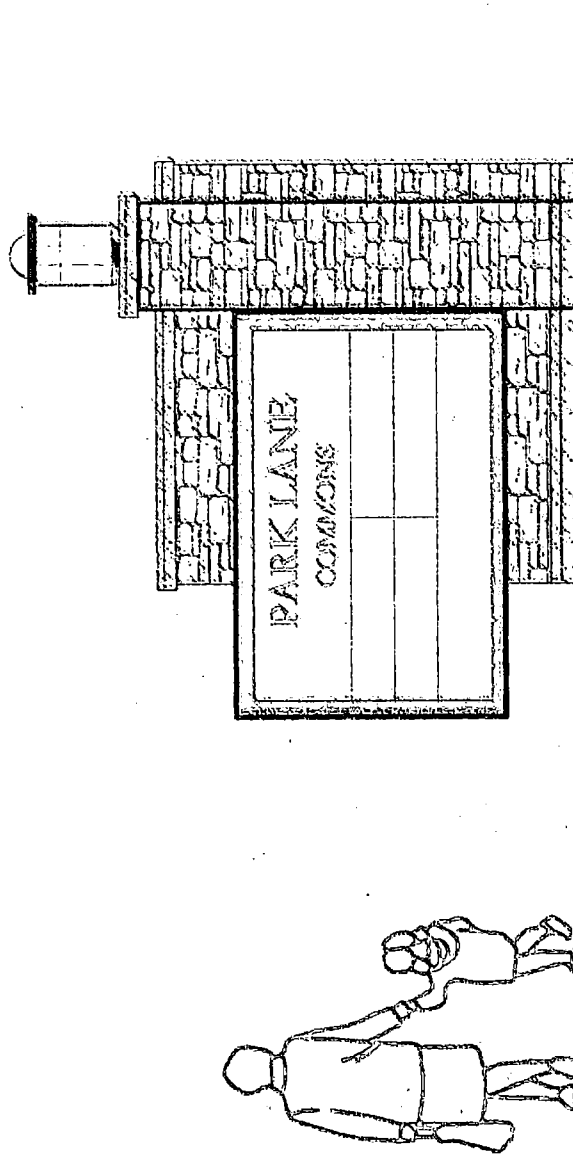
1.4.4 Site Theming Signage

The Site Theming Sign shall consist of the following:

Project Pylon Sign with Illuminated Cabinets (Up to 70' height)



Project Monument Signage (Up to 8')



1.5 Sign Standards by Type

1.5.1 Wall Signs

Wall signs shall be located above the storefront display windows and/or entry doors, parallel to the storefront façade, projecting no more than (8”) eight inches from the building surface. The heights of the signs are outlined in the Maximum Allowable Tenant Signage table that follows in this section of the manual. Colors, finishes and materials for storefront Wall Signs are an extension of those used for the Tenant’s identity. Contrasting designs and materials should be used to convey the Tenant’s unique identity provided that the entire façade demonstrates unified design intent.

Types of Wall Signs to be encouraged include:

- Dimensional letters and logo forms fabricated from durable materials that have a painted, gilded or metal finish. These letters should be illuminated with point source, bracket mounted light fixtures that accentuate the form of the letter and logos.
- Letters and logo forms painted, gilded or screened printed onto continuous or individual fascia panels. These panel signs should be illuminated in a similar manner as described above. Panels shall be layered for visual and three dimension quality.
- Individual channel letters and logos with halo illumination. Letters and logos must be at least (3”) three inches in depth with a LED light source.
- Internally illuminated channel letters and logos with acrylic faces may be allowed for Tenant’s that demonstrate that they will use this sign type with the utmost creativity of design and highest quality materials and fabrication. Minimum conditions that must be met are:
 - The attachment of acrylic faces to the metal channel of the letter form must be clean, flush and discreet.
 - The acrylic face of the letter forms must have a matte finish to avoid reflections in the letter when not illuminated.
 - Raceways connecting letter forms must be concealed within the storefront construction.
 - No light leaks permitted.

- Open channel letters and logos with exposed neon illumination are permitted at the Developer's discretion if they clearly demonstrate and support the Tenant's identity

1.5.2 Wall-Mounted Plaque Signs

Plaque signs are dimensional panels located on Tenant walls, columns, pilasters or doors displaying a Tenant name logo and /or building name. Tenant plaque signs may be installed on Developer provided neutral piers in designated areas. See base building documents for permitted locations and blocking details. Fabrication materials and methods include but are not limited to the following.

- Cast metal with polished letters and/or paint filled background.
- Etched or machined metal.
- Professionally fabricated custom porcelain or ceramic tiles.
- Carved and gilded stone panels.
- Deep etched glass panels.

1.5.3 Shingle/Blade Signs

All Tenants shall be encouraged to install blade signs where indicated. Refer to Section 1.4. The details and materials used for Tenant blade signs should display the unique character of each individual Tenant.

All projecting blade signs will be mounted perpendicular to the storefront and will project (18") eighteen inches to (42") forty-two inches from the building façade and be no greater than (42") forty-two inches in vertical dimension. Blade signs must maintain a minimum clearance of (8'-0") eight feet above the sidewalk. A wide variety of sign types will be available to each Tenant when designing the body of their signs including:

- Object signs of logo or primary sale products fabricated/sculpted from durable materials.
- Dimensional letter/logos attached to sign panels.
- Painted, screen printed or gilded sign panels.
- Exposed neon illumination will NOT be allowed

All blade signs must be illuminated. Projecting blade signs for retail Tenants are permitted to have external light fixtures to illuminate their signs or Tenants may choose to have integral illumination. Illumination will be controlled and can be on only during business hours. Cost of all power and installation is the responsibility of the Tenant. Blade signs must be attached in a manner to prevent excessive swinging of sign. The blade sign bracket should be creative and unique. Sign drawings should show the form of attachment to the building and bolts should be properly concealed.

1.5.4 Window Signs

Tenants are encouraged to add more interesting identity to their storefront with graphics placed directly on the inside face of the glass of windows and/or doors. These may include:

- Screen printing, gilding and cut vinyl. These signs may be applied to the surface of the glass.
- Logos, letters and other supplemental graphics that contribute to the Tenant's identity may be displayed.

1.5.5 Awning, Canopy and Marquee Signs

Tenants are encouraged to install awnings, canopies and /or trellises as a means to provide shade and comfort to shoppers.

- Awning and trellis signs add to the overall identity of the Tenant's façade.
 - The Tenant's name and /or logo may occur in two places on the awning as described in the Maximum Allowable Tenant Signage table that follows.
 - Canopy Sign types are permitted on canopies or trellises. Colors, finishes and materials used for these signs shall be complementary to the Tenant façade and an integral part of the canopy or architectural element. These signs may be attached to the top or vertical face. Sign heights are outlined in the Maximum Allowable Tenant Signage table.
- Types of Canopy Signs to be encouraged include:
- Dimensional letters and logo forms fabricated from durable materials that have a painted, gilded or metal finish. These letters should be illuminated with point source, bracket mounted light fixtures that accentuate the form of the letter and logos.
 - Letters and logo forms painted, gilded or screened printed onto continuous or individual fascia panels. These panels signs should be illuminated in the similar manner as described above, and layered for visual and three dimension quality.
 - Individual channel letters and logos with halo illumination. Letters and logos must be at least (3") three inches in depth with a LED light source.
 - Internally illuminated channel letters and logos with acrylic faces may be allowed for Tenant's that demonstrate that they will use this sign type with the utmost creativity of design and highest quality materials and fabrication.
- Minimum conditions that must be met are:
- The attachment of acrylic faces to the metal channel of the letter form must be clean, flush and discreet.
 - The acrylic face of the letter forms must have a matte finish to avoid reflections in the letter when not illuminated.
 - Raceways connecting letter forms must be concealed within the storefront construction.
 - No light leaks permitted.

1.6 Signage Approval Process

Submit (2) two copies of all required submittals for signage to the Developer for review and approval.

1.6.1 Artwork Submittal

All sign concepts are to be generated from “camera-ready” logo artwork prepared by a professional graphic designer and submitted to the Developer for approval prior to development of any signage.

1.6.2 Concept Drawing Submittal

Included in preliminary storefront submittal, and prior to shop drawings and sign fabrication, Tenant shall submit for Developer approval three sets of Concept drawings reflecting the design of all sign types.

Sign concept drawings are to be submitted concurrently with storefront and awning design. Partial submittals will not be accepted.

1.6.3 Shop Drawing Submittal

Upon Developer’s written approval of Tenant’s concept drawings, Tenant shall submit (3) three complete sets of shop drawings for Developer approval. Shop drawings shall include the following:

- Fully-dimensioned and scaled shop drawings @ 1/2” = 1’0” specifying exact dimensions, copy layout, typestyles, materials, colors, means of attachment, electrical specifications and all other details of construction.
- Elevations of storefront @ 1/2” - 1’0” showing design, location, size and layout of sign drawn to scale indicating dimensions, attachment devices and construction detail.
- Section through letters and/or sign panel @ 1/2” = 1’0” showing the dimensioned projection of the face of the letter and/or sign panel and the illumination.
- Cut-sheets of any external light fixtures.

A full set of final shop drawings must be approved and stamped by the Developer prior to permit application of sign fabricator.

Following Developer's approval of sign shop drawings, Tenant or his agent shall submit to the City of Farmington for permit, sign plans signed by the Developer. Tenant or his agent shall provide Developer with a copy of the permit once it has been issued by the City of Farmington.

Signs shall be inspected upon installation to ensure conformance with the Land- lord approved drawings. Any work unacceptable to Developer shall be corrected or modified at the Tenant's expense.

1.7 Prohibited Sign Types

The following sign types and finishes shall be prohibited at Park Lane Commons - Farmington:

- Illuminated sign boxes.
- Illuminated back-lit canopies.
- Signs with exposed raceways, conduit, junction boxes, transformers lamps, tubing, or neon crossovers of any type.
- Rotating, Animated and Flashing signs.
- Pennants, banners, or flags identifying individual tenants.
- Permanent sandwich boards.
- Rooftop signs, except in areas designated by Developer.
- Plexiglas/Acrylic-faced signage.
- Exposed raceways (unless design elements), conduit, junction boxes, transformers, lamps, tubing, or neon crossovers of any type are prohibited.
- Signs painted on an exterior building wall, fascia, chimney of a building, on a fence or fence-type wall, benches, fence posts, trash receptacles, utility poles, utility boxes, storage sheds, bus shelters, satellite dish antennas, antennas or other accessory structures except as specifically approved by the Developer.

- Any sign designed to be moved from place to place.
- Balloons and inflatable signs. Signs that emit sound, odor or visible matter. Fluorescent or reflective sign colors.
- Simulated materials, i.e. wood grained plastic laminate, wall covering, paper, cardboard or foam.
- Signs that bear or contain statements, words or pictures of an obscene, pornographic or inappropriate character.
- Any sign advertising the availability of employment opportunities.

1.8 Table of Signage Dimensional Requirements

MAXIMUM ALLOWABLE TENANT SIGNAGE											
COMMERCIAL MIXED USE DISTRICT											
SIGN TYPE	LESS THAN 6000 SF			6000 SF TO 20000 SF			GREATER THAN 20000 SF			RESIDENTIAL	
	MAX AREA PER SIGN	MAX LETTER HEIGHT	MAX LETTER DEPTH	MAX AREA PER SIGN	MAX LETTER HEIGHT	MAX LETTER DEPTH	MAX AREA PER SIGN	MAX LETTER HEIGHT	MAX LETTER DEPTH		
1. WALL SIGN***	85 SF**	24"	4"	225 SF**	36"	6"	400 SF**	48"	8"		
2. PLAQUE SIGNS	4 SF	-	-	4 SF	-	-	4 SF	-	-		
3. SHINGLE/BLADE SIGNS	*	*	*	*	*	*	*	*	*		
4. WINDOW SIGNS	10 SF***	8"	-	10 SF***	8"	-	10 SF***	8"	-		
5. AWNING - CANOPY - MARQUEE	60 SF**	18"	-	90 SF**	24"	-	120 SF**	36"	-		
6. MENU POSTER CASE	6 SF	-	-	6 SF	-	-	6 SF	-	-		
7. GRAND OPENING BANNER	10 SF	12"	-	10 SF	12"	-	10 SF	12"	-		
NOTE: GREATER THAN 50000 SF, LANDLORD MAY APPROVE ALTERNATIVE SIGN PLAN											
* - SEE PARAGRAPH 1.5.3											
** - MAXIMUM OF 50 % FRONTAGE LENGTH											
*** - LESS THAN 25% OF THE TOTAL WINDOW AREA											
**** - LIMITED TO PRIMARY FAÇADE OR FRONTAGE ALONG PROMENADE											

Note: Developer shall have the right to make exceptions to these requirements based upon the draw an individual tenant may have to the Project.