

Return Recorded Document to:

TFC Clinton Retail, LLC  
6770 South 900 East, Suite 300  
Salt Lake City, UT 84047  
Attn: Jason Smith

Affects Tax Parcel No.:  
13-384-0001  
13-384-0002

**DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS  
FOR  
HOMESTEAD CLINTON PAVILION AMENDED SUBDIVISION**

THIS DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS FOR HOMESTEAD CLINTON PAVILION AMENDED SUBDIVISION (this "***Declaration***") is executed, effective as of August 21, 2024 (the "***Effective Date***"), by TFC CLINTON RETAIL, LLC, a Utah limited liability company ("***Declarant***").

**RECITALS**

A. Declarant is the owner of approximately 1.65 acres of real property located in Clinton, Utah, more particularly described in Exhibit A attached hereto (the "***Property***").

B. Declarant desires to establish the Property as a commercial development to be known as "Homestead Clinton Pavilion Amended Subdivision" (the "***Retail Center***"), which will comprise a two (2) lot subdivision within a larger commercial shopping center.

C. The Retail Center shall consist of two (2) subdivided, commercial lots (See *Site Plan*, attached hereto as Exhibit B). The lot located in the northern portion of the Property, more particularly described in Exhibit A-1 ("***Lot 1A***"), will contain one commercial building with two tenant spaces and will be initially subject to that certain lease (the "***Chipotle Lease***") by and between TFC Clinton Retail, LLC and Chipotle Mexican Grill, Inc., and that certain lease (the "***Mo'Bettahs Lease***") by and between TFC Clinton Retail, LLC and Savory MB Stores, LLC, a Utah limited liability company. The lot located in the southern portion of the Property, more particularly described in Exhibit A-2 ("***Lot 1B***"), will contain one commercial building and will be initially subject to a lease for a Dutch Bros Coffee location (the "***Dutch Bros Lease***"). Lot 1A and Lot 1B may be collectively referred to herein as the "***Lots***" and individually as a "***Lot***."

D. The Retail Center is also subject to that certain Declaration of Easements and Conditions recorded with the Davis County Recorder's Office on December 5, 2008, as Entry No. 2408700 on Page 802 of Book 4670 by WinCo Foods, LLC and Homestead Pavilion, LLC, as amended (the "***Master Declaration***"). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Master Declaration.

E. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, and easements set forth in this Declaration.

**DECLARATION**

In consideration of the foregoing, Declarant hereby declares as follows:

1. **DECLARATION.**

1.1. **Declaration.** Declarant hereby creates a commercial real estate development project named "Homestead Clinton Pavilion Amended Subdivision" on the Property and declares that the Lots shall be held, sold, leased and conveyed subject to the covenants, conditions, restrictions, reservations, and easements and other provisions of this Declaration. This Declaration is hereby made subject to that certain Master Declaration, and in the event of any conflicts between this Declaration and the Master Declaration, the Master Declaration shall control.

1.2. **Covenants Running with the Land.** All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners (as such term is defined below), and all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

2. **DEFINITIONS.** For purposes hereof:

2.1. **"Building Area"** shall mean the area, located within a Lot, that is designated as space for a building on the Site Plan. Canopies may encroach from the Building Area over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

2.2. **"Common Areas"** shall mean: (a) all areas in a Lot that are not within the Building Area on such Lot; together with (b) those portions of the Building Area on such Lot which at any time are not actually covered by a building or cannot under the terms of this Declaration be used for a building; together with (c) those improvements, located on the areas referred to in the preceding items (a) and (b), which are intended and designed for use as parking areas for vehicles, driveways, sidewalks, and landscaped areas, as the areas and improvements defined and described by the foregoing part of this item (c) may exist or be composed from time to time. Notwithstanding anything to the contrary contained herein or in the Site Plan, Outdoor Commercial Facilities (defined in Section 2.16 below) are not considered Common Areas.

2.3. **"Common Area Costs"** means (i) the Operator Maintenance Area Costs and Administration Fee (as such terms are defined in Section 4.2(b) of the Master Declaration); and (ii) any other costs or expenses assessed to the Retail Center under the Master Declaration (except that any charges under the Master Declaration charged due to the act or omission of a specific Owner or Permittee of such Lot shall be the sole responsibility of such Owner).

2.4. **"Declarant Affiliate"** is defined in Section 9.1 below.

2.5. **"Design Guidelines"** means the design guidelines established by Declarant, a copy of which is attached hereto as Exhibit D, and those guidelines outlined in Section 3 of the Master Declaration (collectively, the **"Design Guidelines"**). The Design Guidelines—except for those outlined in the Master Declaration—may be amended in the same manner as this Declaration, as set forth in Section 22.2 below.

2.6. **"Environmental Laws"** is defined in Section 18 below.

2.7. **"Hazardous Substance"** is defined in Section 18 below.

2.8. "**Lot**" shall mean and refer to one of the two (2) Lots described on Exhibits A-1 and A-2, attached hereto and incorporated herein by this reference.

2.9. "**Maintenance and Repair Activities**" is defined in Section 8.1 below.

2.10. "**Major Tenant**" shall mean and refer to a Permittee which has a bona fide, written lease agreement with an Owner (or a written sublease agreement with the tenant of the Owner), pertaining to at least forty percent (40%) of all leasable space located within the building constructed upon such Owner's Lot, pursuant to which such Major Tenant operates or anticipates operating a business upon such Lot in compliance with this Declaration.

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

2.12. "**Outdoor Commercial Facility**" shall mean and refer to a commercial structure or facility, such as a drive-in or drive-through facility, patio space, trash enclosure areas, or other similar facility that is not enclosed or fully enclosed, that is intended to be used or controlled by the Owner or tenant of the Lot on which such structure or facility is located, and that is not intended for use in common with other Owners or tenants.

2.13. "**Owner**" shall mean and refer to the party which at the time concerned is the owner of record (in the office of the County Recorder of Davis County, Utah) of a fee or of an undivided fee interest in the Lot or in any portion of the Lot concerned (including, without limitation, in the building located on such Lot). In the event there is more than one Owner of the Lot involved at the time concerned, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

2.14. "**Permittees**" shall mean the tenants or occupants of the Lots, and the respective employees, agents, contractors, customers, invitees and licensees of: (a) the Owners of such Lots, and/or (b) such tenants or occupants.

2.15. "**Plans**" is defined in Section 3.2 below.

2.16. "**Plat**" shall mean the collective reference to the following duly approved and recorded plats filed in the office of the Davis County Recorder entitled: (i) Homestead Clinton Pavilion Amended Subdivision Plat, which plat has been filed with the Davis County Recorder's office; and (ii) all future plats for future phases of the Homestead Clinton Pavilion Amended Subdivision, if any.

2.17. "**Prohibited Use**" shall mean each of the following uses:

- (a) Any use in violation of applicable governmental laws, ordinances, codes, and regulations;
- (b) Any use which constitutes a public or private nuisance;
- (c) Any use which produces noise or sound which may be heard outside of any building on the Property and is objectionable due to intermittence, beat, frequency, shrillness or loudness;

(d) Any use which produces any noxious odor or which may be smelled outside any building on the Property other than such odors as are typically incidental to first class retail operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;

(e) Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);

(f) Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display, or sale of explosives or fireworks);

(g) Any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation;

(h) Any mobile home or trailer court, mortuary, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Retail Center;

(i) A cocktail lounge, bar, tavern or nightclub, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, or amusement arcade;

(j) Any operation for drilling for and/or removal of subsurface substances, including but not limited to oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind;

(k) Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

(l) Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions, and strip clubs and the like, and marijuana dispensers;

(m) Any use involving automobile sales;

(n) Any second-hand store or auction house, flea market, fire sale, bankruptcy or going out of business sale business, or marijuana dispensers;

(o) Except with respect to the portion of the Retail Center leased to the tenant under the Chipotle Lease, for so long as the Chipotle Lease is in force and effect, no portion of the Retail Center shall be used for the selling of burritos, wraps, fajitas, or tacos;

(p) Except with respect to the portion of the Retail Center leased to the tenant under the Mo'Bettahs Lease, for so long as the Mo'Bettahs Lease is in force and effect, no portion of the Retail Center shall be used, without the prior written consent of the tenant under the Mo'Bettahs Lease, for the purpose of any restaurant whose primary food sales (i.e., more than 20% of food entrees) are derived from the sale of Hawaiian food, including Hawaiian-styled meats (e.g., teriyaki chicken, pulehu chicken, pulehu beef, poke, and kalua pig/pulled pork) with or without rice and macaroni salad; rice bowls; teriyaki bowls; and all other Hawaiian themed food items (the "**Mo'Bettahs Use Restriction**"). The Mo'Bettahs Use Restriction specifically prohibits the following (and similar) restaurants: Teriyaki Bowl, Panda

Express, Rumbi Island Grill, L&L Hawaiian Grill, Hawaiian Brothers, Tiki Island Kitchen, LOL Hawaiian Grill, Ohana Grill, Sweet's Hawaiian Grill, Kokonut Hawaiian Grill, LoLo Hawaiian BBQ, 808 Hawaiian Grill, Gnarley's Hawaiian Grill, Ono Hawaiian BBQ, Aloha Hawaiian Barbecue, Side of Aloha, Maui Fresh Grill, and Tropical Smoothie Café. The Mo'Bettahs Use Restriction does not apply to a "fast food" restaurant (e.g., Taco Bell or Kentucky Fried Chicken) or any restaurant operating in the Retail Center as of the effective date of the Mo'Bettahs Lease (but such exclusion only applies to current restaurant use);

(q) Except with respect to the portion of the Retail Center leased to the tenant under the Dutch Bros Lease, for so long as the Dutch Bros Lease is in force and effect, no other tenant or Owner occupying any portion of the Retail Center may operate a business whose primary purpose is selling any of the following (collectively, the "**Protected Items**"): coffee, blended drinks, smoothies, and/or energy drinks. The term "primary purpose" means a person or entity deriving twenty percent (20%) or more of its annual gross revenue from the sale of any or all of the Protected Items; and

(r) Any of the uses not permitted under Section 5.1 of the Master Declaration.

Furthermore, for so long as Declarant owns one or more of the Lots, Declarant shall have the right to amend this Declaration by inserting additional "Prohibited Uses," provided that any such additional Prohibited Uses (1) relate to reasonable and customary (so-called) "exclusive use" rights which Declarant may desire to grant in the future to restaurant or retail businesses desiring to operate upon any Lot, under any other future leases relating to any portion of the Lots; (2) shall not conflict with the foregoing Prohibited Uses described in this Section, and (3) shall be subject to any use rights granted to occupants of any portion of the Retail Center (and not in violation of this Declaration) prior to the date of such amendment by Declarant.

2.18. "**Rules and Regulations**" means any instrument adopted by approval of the Owners in their reasonable business judgment for the regulation and management of the Retail Center and which are generally applicable to the Retail Center. The initial Rules and Regulations of the Retail Center, as adopted by the Declarant, are attached hereto and incorporated herein as Exhibit C.

2.19. "**Retail Center**" shall have the meaning given to such term in Recital B above.

2.20. "**Site Plan**" shall mean and refer to the Site Plan attached hereto as Exhibit B and incorporated herein by this reference. The Site Plan shows, among other things, the Lots and the Building Area.

### 3. **BUILDING LOCATION, DESIGN, AND CONSTRUCTION.**

3.1. *Building Location.* Each building, Outdoor Commercial Facility, or other structure now or hereafter placed or constructed upon a Lot shall be located only within the Building Area of such Lot; provided, however, that: (i) canopies and roof overhangs (including columns or pillars supporting them), normal sub-surface footings and foundations, signs affixed to buildings, and doors for ingress and egress may project from a Building Area into the adjacent Common Areas; (ii) any drive-in or drive-through facility, patio dining area, or trash enclosure area, contemplated by the Site Plan may be constructed generally consistent with the Site Plan (even though such drive-in or drive-through facility, patio dining area, or trash enclosure area, may extend beyond the Building Area on the Lot concerned), so long as any portion of such drive-in or drive-through facility, patio dining area, or trash enclosure area, which is outside the Building Area is wholly located within the Lot such drive-in or drive-through facility, patio dining area, or trash enclosure area, is intended to serve; and (iii) any drive-in or drive-through facility that is hereafter constructed or reconfigured on a Lot may in part



extend beyond the Building Area on the Lot concerned, so long as the portion of such facility extending beyond the Building Area is wholly located within the Lot intended to be served by such facility, consists of only drive lanes, reader boards, and/or communication equipment, and does not adversely affect access between the Lots.

3.2. *Design of Improvements within the Retail Center.* No construction of a building or other structure of any kind shall be erected, placed, or maintained on any portion of the Lots except within the Building Area of each Lot. In order to ensure compliance with the Design Guidelines for all improvements to be constructed upon the Lots (or with respect to any additions, remodeling, reconstruction, or any other alterations which materially changes the exterior of the structure), prior to submission to Clinton City, a detailed set of plans comprised of a site plan, foundation plan, floor plan, elevations of all sides, and exterior design ("*Plans*") shall be submitted to Declarant for approval. The Plans submitted to Declarant for approval shall also include a detailed set of plans for the Common Area improvements (including, without limitation, landscaping plans) to be constructed by the Owner in accordance with Section 4 below. If Declarant rejects the Plans for not complying with the Design Guidelines, the submitting party and Declarant shall mutually consult to establish approved Plans for the proposed work. Declarant shall not withhold approval of the Plans or recommend changes in the Plans which otherwise conform to the requirements of the Design Guidelines, nor shall Declarant withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing structure, or substantially change an existing structure. Approval of Plans by Declarant shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety of the Plans, nor shall such approval constitute a representation or warranty that the Plans comply with governmental requirements. No material deviation shall be made from the approved Plans without approval by Declarant in accordance with this Section 3.2. After Declarant (or a Declarant Affiliate) no longer owns any Declarant Lots, then the rights and responsibilities of Declarant under this Section 3.2 shall belong to, and be performed by, the Owners by mutual agreement.

3.3. *Construction Activities.* In the event a building or Outdoor Commercial Facility is constructed, altered, remodeled, or repaired on a Lot, the Owner of such Lot shall cause all of the following to be the case in connection with such construction or alteration: (a) the area where construction is occurring shall be fenced off or otherwise segregated so as not to interfere with the course of business in the remainder of the Retail Center, and shall be maintained in as neat and dust-free a condition as is reasonably possible; (b) the construction activities involved shall be performed with reasonable diligence, and any ladders, scaffolding, barricades, and the like shall be promptly removed upon completion of the work; (c) if the construction activities damage improvements to the Common Areas, such damage shall be repaired as soon as reasonably possible; (d) the construction activities shall not interfere any more than is reasonably necessary with the normal use of and access over Common Areas located elsewhere than on the Lot containing the building or Outdoor Commercial Facility that is the subject of the construction; (e) all construction materials and equipment shall be removed from the Common Areas as soon as reasonably possible following completion of the construction activities; and (f) the construction activities shall not cause damage to any building or other improvement located upon another Lot within the Retail Center, nor shall such activities interrupt utility services provided to another Lot in a manner which would limit or restrict customary business operations from being conducted upon such Lot. Any portion(s) of a Building Area on a Lot that may remain after a building or Outdoor Commercial Facility has been constructed within such Building Area shall be developed by the Owner of such Lot and thereafter maintained as Common Areas, if and to the extent that and for as long as such portion(s) are not, as a result of the size or configuration thereof or as a result of the above-established limitation on the Floor Area of the building which may actually be constructed, usable practically or legally as the Lot of a building or Outdoor Commercial Facility.

3.4. *Mechanical Equipment, Dumpsters and Storage.* Any rubbish or debris of any kind shall be placed in dumpsters enclosed within enclosures designed to be compatible with the overall architecture of the Retail Center, within each Lot as depicted in the Site Plan. However, trash receptacles may be placed on sidewalks within the Retail Center. All mechanical equipment located on a Lot shall be screened from view. Outdoor storage is strictly prohibited.

4. **IMPROVEMENT AND USE OF COMMON AREAS.** In conjunction with the construction and completion of any building or Outdoor Commercial Facility situated on a Lot, the Owner of the Lot concerned shall install, at its own expense, the Common Area improvements on said Lot that are contemplated by the Site Plan, and/or that are reasonably necessary or desirable in connection with the full development of the Retail Center as a first-class retail center. No buildings or structures shall be placed or constructed in the Common Areas (except as may otherwise be provided in the Site Plan), provided that directional signs, paving, bumper guards or curbs, landscape planters, lighting standards, trash enclosures (with all trash being screened from view from the parking areas), and the pylon and monument signs provided for in Section 11 of this Declaration may be placed or constructed in the Common Areas. In order to ensure compliance with the Design Guidelines, all plans for Common Area improvements (and plans for alterations or modifications of existing Common Area improvements) on a Lot (including, without limitation, landscaping plans) shall be approved in advance by Declarant in accordance with Section 3.2 above. After Declarant (or a Declarant Affiliate) no longer owns any Lots, then the rights and responsibilities of Declarant to approve plans for Common Area improvements (or plans for alterations or modifications of existing Common Area improvements) under this Section 4 shall belong to, and be performed by, the Owners by mutual agreement.

Any alteration of the Common Area improvements by an Owner shall be at the Owner's own expense and shall be done in compliance with, and not result in any violation of, either this Declaration or applicable legal requirements. The Common Areas on each of the Lots shall be used for vehicular driving and parking, pedestrian traffic, landscaping, and/or related or incidental purposes. No promotional or selling activities shall be undertaken or engaged in such Common Areas.

5. **EASEMENTS FOR ACCESS AND PARKING.** Each Lot shall have appurtenant to it and be benefitted by a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and for vehicular parking on, over, and across all of the access ways, driveways, roads, sidewalks, pathways, and parking areas comprising portions of the Common Areas, as such Common Areas may exist from time to time, and each Lot shall be subject to and burdened by such nonexclusive easement benefitting each other Lot allowing such use on a 24 hours per day 7 days per week basis. Notwithstanding the foregoing, the Declarant may designate up to [four (4)] parking spaces adjoining a building constructed on a Lot as reserved spaces for customers of the business(es) operating within such Building.

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

6. **EASEMENTS FOR UTILITY FACILITIES.**

6.1. *Generally.* Each of the Lots shall have appurtenant thereto and shall be benefitted by a nonexclusive easement for the laying, installation, operation, servicing, repair, maintenance, removal, and/or replacement of underground utility lines, wires, conduits, and related facilities

(including, but not limited to, underground lines, sewer lines, wires, conduits, and facilities for telephone, other communication, electricity, natural gas, other fuels or power sources, sewage, storm drainage, and all types of water) through such portions of each of the other Lots as are, at the time concerned, either unimproved or are Common Areas and reasonably susceptible of such use. Said portions of each of the Lots shall be subject to and burdened by such nonexclusive easement benefitting each of the other Lot. The lines, wires, conduits, and other facilities that are installed by the Owner of a Lot on another Lot shall be sufficiently strong and shall be buried deep enough so that they can withstand, without damage, surface vehicular traffic of the type reasonably expected on such other Lot. In the event the easement rights provided for in this Section are exercised, the Owner of the Lot intended to be served thereby shall pay or cause to be paid the cost involved and at its sole cost shall restore or cause to be restored to substantially their previous condition any improvements on any of the Lots which may be damaged as a result of such exercise. Each utility line, connection, installation, or other facility or utility-related facility which is located anywhere within any of the Lots shall, to the extent reasonably practical, be located underground.

6.2. *Storm Drainage.* Without limiting the generality of the foregoing, it is recognized that a storm water drainage system shall be constructed consisting of a combination of surface drainage, underground storm drainage lines, and a storm water detention area (as reflected on the Site Plan). All reasonably necessary easements for the existence and operation of such drainage system are hereby created.

7. **OPERATION AND MAINTENANCE OF BUILDINGS AND OUTDOOR COMMERCIAL FACILITIES.** The Owner of each Lot shall be obligated to maintain, at its own expense and in reasonably good and attractive order, condition, and repair, the building (and, if present, any Outdoor Commercial Facility) situated on its Lot. No provision of this Declaration is intended to mean or shall be construed to mean that any building or Outdoor Commercial Facility on any Lot cannot be razed or removed at any time or must be restored or reconstructed in the event the same is damaged or destroyed. However, should any such building or Outdoor Commercial Facility be damaged or destroyed, the Owner of the Lot on which such building or Outdoor Commercial Facility is or was located either (i) shall cause such building or Outdoor Commercial Facility to be restored (subject to the design approval process set forth in Section 3.2 above), or (ii) shall cause whatever remains of such building or Outdoor Commercial Facility to be razed, all debris to be removed, and the Lot of such building or Outdoor Commercial Facility to be paved and in a level, clean, and sightly condition pending construction of a replacement. The construction required to accomplish the state of affairs described in either (i) and (ii) above shall be commenced as soon as reasonably possible, and shall be completed, in the case of razing, within 120 days after the date of damage (unless a longer period is needed because of adverse weather conditions) or, in the case of restoration, within 18 months after the date of damage.

8. **OPERATION AND MAINTENANCE OF COMMON AREAS.**

8.1. *Maintenance and Repair Activities.* The Common Areas located within the Retail Center shall be kept in a reasonably clean, orderly, attractive, and usable condition and in a good state of maintenance and repair consistent with other first-class retail shopping centers of similar size and age within the Davis County, Utah area. In this regard, and without limiting the generality of the previous sentence, the Common Areas shall be maintained consistent with the following activities (collectively, the "*Maintenance and Repair Activities*"):

- (a) Maintaining all surfaces within the Common Areas, including but not limited to sidewalks, pathways, roadways and parking areas in a level, smooth, and evenly-covered condition with the type of surfacing material originally installed or such substitute as is in all respects at least equal in quality, use, and durability, and making reasonable repairs to, and



replacing from time to time such surfaces (consistent with other first-class retail shopping centers of similar size and age within the Davis County area);

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

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

(d) Operating, keeping in repair, and replacing, as necessary, such artificial lighting facilities as are reasonably required;

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

(f) Maintaining storm drains and storm water detention areas included as part of the Common Areas;

(g) Removing refuse and accumulations of snow from the access ways, driveways, roads, sidewalks, pathways, and parking areas included within the Common Areas; and

(h) Taking any other customary actions as may be reasonably necessary or appropriate to operate and regulate the use of Common Areas.

8.2. *Responsibility to Perform.* Each Owner shall be responsible for performing the Maintenance and Repair Activities for the Common Areas located within its Lot at such Owner's sole cost and expense (or alternatively, by a Major Tenant if such Maintenance and Repair Activities are delegated to such Major Tenant pursuant to the Major Tenant's lease), except for the Operator Maintenance Area (which is maintained as provided for in the Master Declaration and for which each Owner will be responsible for their own Operator Maintenance Area Costs). The Operator Maintenance Area Costs assessed to the Larger Parcel under the Master Declaration shall be assessed in all events as follows: (a) 57.24% shall be assessed to Lot 1A; and (b) 42.76% shall be assessed to Lot 1B. If an Owner (the "Defaulting Owner") fails to properly perform the Maintenance and Repair Activities for the Common Areas located on its Lot, then the other Owner may give the Defaulting Owner written notice of the claimed maintenance or repair failure, and the Defaulting Owner shall have thirty (30) days following the receipt of such written notice to cure such failure. If the Defaulting Owner does not cure the maintenance or repair failure within the thirty (30) day period, or if such failure is not curable within the thirty (30) day period and the Defaulting Owner has not begun to cure such failure within the thirty (30) day period, the other Owner may, but shall not be required to, cure the maintenance or repair failure, and then seek reimbursement from the Defaulting Owner for all of such Owner's expenses. Such reimbursements shall be made immediately. If any such reimbursement is not paid in full within ten (10) days after written notice, the unpaid amount shall bear interest at the rate of fifteen percent (15%) per annum from the date of receipt of the written notice until the date such amount is paid in full. In the event that the Defaulting Owner fails to pay any amount due under this Agreement within thirty (30) days after it is due, the other Owner shall be entitled to record a Notice of Lien against the Defaulting Owner's Lot in the amounts then due and owing.

9. **SIGNS.** Any signage (including pylon or monument signage) shall be provided with respect to each Lot, if at all. All signage shall be designed to be architecturally compatible with the design theme for the Retail Center. All signs must comply with (i) applicable zoning and other governmental requirements; and (ii) the terms and conditions of Section 5.3 of the Master Declaration (unless otherwise approved or permitted by the applicable Approving Party identified in the Master Declaration).

10. **INSURANCE.**

10.1. *Liability Insurance Maintained by Owners.* The Owner of each Lot shall at all times and at its own expense pay for and maintain in effect public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about, or by reason of activities within, such Owner's Lot. Such insurance shall be written on an "occurrence" (rather than a "claims made") basis and shall be carried with responsible companies. The limits of such insurance shall be such as to afford at least the coverage provided by a "combined single limit" of \$2,000,000.00. The named insureds under such insurance shall be the respective Owners of the Lots and such additional party or parties (having an interest in a Lot) as any of the Owners direct the insuring Owner in writing to have named as an insured. The insuring Owner shall, upon the written request of any party which then has an interest in any other Lot (including the Mortgagee under any first-position Mortgage affecting any other Lot), furnish to such party a certificate of insurance issued by or on behalf of the insurer, evidencing that the liability insurance required by this Section to be carried by the insuring Owner is in force. The liability insurance policy required by this Section may not be canceled or reduced in amount or coverage below the requirements of this Section without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured. The act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds. The liability insurance policy required by this Section shall provide for contractual liability coverage with respect to the indemnity obligations set forth in this Declaration. Each Owner may satisfy its obligations under this Section 12.1 through insurance policies carried by a tenant of an Owner on behalf of such Owner.

10.2. *Casualty Insurance.* Furthermore, the Owner of each Lot shall at all times and at its own expense pay for and maintain in effect property policy with special form insurance coverage on all buildings and other improvements (including Common Areas) located upon all Lot(s) owned by such Owner, including loss or damage by fire and such other risks as are from time to time included in the all-risk / property policy with special form coverage insurance policies customarily issued in Utah, in an amount of the replacement value of such buildings and improvements. Each Owner may satisfy its obligations under this Section 12.2 through insurance policies carried by a tenant of an Owner on behalf of such Owner.

10.3. *Insurance Coverage during Construction.* Prior to commencing construction activities within the Retail Center, each Owner or Permittee shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the following minimum insurance coverages: workers' compensation insurance in the amount required by applicable law or regulation; employer's liability insurance in the amount of \$1,000,000; general commercial liability insurance covering premises and operations, products and completed operations, contractual liability, broad form property damage, explosion, collapse, underground hazards, and personal injury liability in the amount of \$2,000,000 per occurrence; automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired and non-owned automobiles, with limits of liability of not less than \$1,000,000; and umbrella/excess liability insurance in the amount of \$5,000,000 (to be carried by the general contractor). If the construction activity involves the use of another Owner's Lot, the Owner of such other Lot shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount of coverage below the requirements of this Section, without at least thirty (30) days' prior written

notice to the insureds and each additional insured. If such insurance is canceled or expires, the constructing Owner shall immediately stop all work on or use of the other Owner's Lot until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner with certificate(s) of insurance with respect to all insurance required by this Section.

10.4. *Other Insurance Requirements.* In addition to the insurance requirements of Sections 12.1 – 12.4 above, each Owner agrees to comply with any other or additional insurance requirements outlined in Section 5.4 of the Master Declaration.

10.5. *Waiver of Subrogation.* The Owners and Permittees each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner, or Permittee or their respective property, either real or personal, arising from any risk generally covered by the Owner's property insurance described in Section 12.2 above. The Owners shall use reasonable efforts to obtain, if needed, appropriate endorsements to the Owners' property insurance policies with respect to the foregoing waiver; provided, however, that failure to obtain such endorsements shall not affect the waiver hereinabove given. In addition, the Owners shall cause the insurance companies issuing the Owners' property insurance to waive any right of subrogation that the insurance companies may have against the other Owners. It is the intent of Declarant that with respect to any loss from a peril required to be covered under an Owner's property insurance policy required by Section 12.2 above, that the Owners shall look solely to their respective insurance company for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the state where the Retail Center is situated, and provided further that no policy of insurance is invalidated thereby.

11. **INDEMNIFICATION.** The Owner of each Lot shall indemnify, defend, and hold harmless the Owner of each other Lot and each Major Tenant of each other Lot from and against any and all liability, damages, expenses, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage (i) arising from or out of any occurrence in or upon the indemnifying Owner's Lot, unless caused in whole or in part by the act or neglect of the Owner of the other Lot; or (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner or its Permittees.

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

13. **USE RESTRICTIONS.** Each of the Lots shall be used only for commercial purposes of the type normally found in a retail shopping center. No Lot shall be used for a Prohibited Use.

14. **EMINENT DOMAIN.** Nothing in this Declaration shall be construed to give any Owner any interest in any award or payment made to the Owner of any other Lot in connection with any exercise of eminent domain or transfer in lieu thereof affecting such other Lot or giving the public or any governmental body any rights in such other Lot. In the event of any exercise of eminent domain or transfer in lieu thereof that occurs with respect to any Lot, the award made with respect to such Lot shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owner of any other Lot. However, any Owner whose Lot is not taken may file collateral claims against the condemning authority for such Owner's losses which are separate and apart from the value of the land area and improvements that are taken from another Lot. In the event part of a Lot is condemned or is transferred in lieu of condemnation, the Owner of such Lot shall promptly repair and restore the remainder of the Lot as nearly as practicable to the condition the Lot was in immediately prior to such condemnation or transfer, to the extent that the proceeds of the condemnation award or compensation are sufficient to pay the cost of such restoration and repair, and without contribution from any other Owner; provided, however, that if such repair and restoration would not be practicable in view of the use then being made of the Lot, none shall be required. Nothing in this Section is intended to or shall prevent a tenant from making a claim against an Owner, pursuant to the provisions of any lease between the tenant and the Owner, for all or part of any condemnation-related award or payment.

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

16. **HAZARDOUS SUBSTANCES.** No Owner nor Permittee shall use, produce, store, release, dispose or handle in or about the Retail Center or transfer to or from the Retail Center (or permit any other party to do such acts) any Hazardous Substance (defined below) except in compliance with all applicable Environmental Laws (defined below) and Section 6 of the Master Declaration. No Owner or Permittee shall construct or use any improvements, fixtures, or equipment or engage in any act on or about the Retail Center that would require the procurement of any license or permit pursuant to any Environmental Law. Each Owner shall immediately notify the other Owners of (i) the existence of any Hazardous Substance on or about such Owner's Lot that may be in violation of any Environmental Law (regardless of whether such Owner is responsible for the existence of such Hazardous Substance), (ii) any proceeding or investigation by any governmental authority regarding the presence of any Hazardous Substance on such Owner's Lot or the migration thereof to or from any other property, (iii) all claims made or threatened by any third party against such Owner relating to any loss or injury resulting from any Hazardous Substance, or (iv) such Owner's notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Leased Premises. "***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. "***Hazardous Substance***" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Law. If it is determined that any Hazardous Substance exists on the Retail Center resulting from any act of an Owner or its Permittees, then such Owner shall, at such Owner's cost and expense, immediately take necessary action to cause the removal of the substance and shall remove such within ten (10) days after discovery. Notwithstanding the above, if the Hazardous Substance is of a nature that cannot be reasonably removed within ten (10) days Owner shall not be in default if Owner has commenced to cause such removal and proceeds diligently thereafter to complete removal, except that in all cases, any Hazardous Substance must be removed within sixty (60) days after discovery thereof. Furthermore, notwithstanding the above, if in the good faith judgment the other Owners, the existence of such Hazardous Substance creates an emergency or is of a nature which may result in immediate physical danger to persons at the Retail Center, the other Owners may enter upon such Owner's Lot and remove such Hazardous Substances and charge the cost thereof to such Owner. Such Owner shall fully indemnify and defend the other Owners against all Hazardous Substance removal, cleanup and other environmental remediation costs and all other claims arising out of or relating to the generation, use, transportation or disposal of Hazardous Substances or other substances at, upon or from the Retail Center by such Owner or its Permittees, including claims for fines or penalties. The foregoing cleanup, defense and indemnity obligations shall survive the termination of this Declaration.

17. **REMEDIES AND ENFORCEMENT.**

17.1. *All Legal and Equitable Remedies Available.* In the event of a default or threatened default by any Owner or its Permittees of any of the terms, easements, covenants, conditions or restrictions hereof, the other Owner(s) and all Major Tenants shall be entitled forthwith to full and



adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

17.2. *Remedies Cumulative.* The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

17.3. *No Termination for Default.* Notwithstanding the foregoing to the contrary, no default hereunder shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Property made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

18. **TITLE AND MORTGAGE PROTECTION.** A breach of any of the covenants, restrictions, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot. A breach of any of the covenants, restrictions, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee or trustee interested under any Mortgage affecting a Lot shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, restrictions, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a properly recorded Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment. Notwithstanding the foregoing, if Mortgagee fails to respond within thirty (30) days from the date Declarant or the Owners mail (by overnight courier) a request for consent to a proposed amendment to this Declaration, such Mortgagee shall be deemed to have consented to the proposed amendment provided to the Mortgagee and the Mortgagee's rights under its Mortgage shall be subject to such proposed amendment upon the completion of the amendment process identified in Section 22.2 below.

19. **DEFAULT AND ENFORCEMENT.** The Owner of any Lot and/or any Major Tenant shall have the right to enforce, through appropriate proceedings at law or in equity, such of the easements, covenants, restrictions, provisions, and requirements of this Declaration as are intended to benefit the Lot in which such Owner and/or Major Tenant is interested. In addition, in the event the Owner of any Lot defaults in performance of any of its obligations under this Declaration, the Owner of any other Lot shall have the right, upon the expiration of thirty (30) days following written notice of such default given to both the defaulting Owner and the Mortgagee under any properly recorded first-position Mortgage which may then affect the Lot owned by the defaulting Owner (unless efforts to effect a cure of a non-monetary default have been instituted within said period and are thereafter diligently pursued to completion), to perform in the defaulting Owner's stead and thereafter to be reimbursed by the defaulting Owner, upon demand, for all costs, expenses, and damages incurred or reasonably expended by reason of the default, together with interest thereon at the rate of ten percent (10%) per annum and reasonable attorneys' fees (including those incurred in connection with any appeal). If any action is brought because of a default under or to enforce or interpret any of the easements, covenants, restrictions, provisions, or requirements of this Declaration, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

20. **MISCELLANEOUS.**



20.1. *Attorneys' Fees.* In the event any party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

20.2. *Amendment.* Except as otherwise provided in this Section, any provision contained in this Declaration may be amended by, but only by an instrument filed for record with the County Recorder of Davis County, Utah which is executed by (i) Declarant, without the approval of the other Owners, so long as Declarant owns one or more of the Lots in the Retail Center, or (b) in the event Declarant does not own any Lots in the Retail Center, the Majority Owners. Notwithstanding Declarant's authority to unilaterally amend this Declaration, if an amendment to this Declaration (1) directly or materially affects the access to, visibility of or parking on a Lot; or (2) would result in a material increase in financial obligations for an Owner or Major Tenant; or (3) modifies Section 2.21 (titled "Prohibited Uses") in a manner which would purport to materially alter a Major Tenant's ability to engage in activities upon its Lot which are consistent with such Major Tenant's then-existing business activities, and are not Prohibited Uses hereunder prior to such amendment (collectively, a "**Major Amendment to Declaration**"), then the Owner of any such affected Lot along with any Major Tenant leasing space within such affected Lot must also consent to such Major Amendment to Declaration.

20.3. *Contributions from Third Parties.* Nothing in this Declaration shall limit or shall be construed to limit the right of an Owner to require, pursuant to leases, contracts, or other agreements entered into with tenants, lessees, sublessees, contract buyers, or other third parties, contribution from said tenants, contract buyers, or other third parties toward any of the obligations or expenses required to be paid by such Owner under this Declaration, including but not limited to the Common Area Costs.

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

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

20.6. *No Rights in Public; No Implied Easements.* Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Retail Center.

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

20.8. *Duration.* This Declaration and all of the provisions hereof (except any provisions hereof which by their terms may cease to be effective at an earlier time) shall remain effective until this Declaration is terminated and extinguished by an instrument, filed for record in the office of the County Recorder of Davis County, Utah, executed by: (i) all of the Owners; and, in addition, (ii) the Mortgagee under each properly recorded Mortgage then affecting any of the Lots.

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

**\*\*Signature on the following page\*\***

IN WITNESS WHEREOF, Declarant executes this Declaration effective as of the date first written above.

**DECLARANT:**

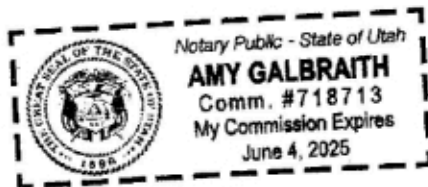
TFC CLINTON RETAIL, LLC, a Utah limited liability company

By: [Signature]  
Name: JASON E SMITH  
Title: MANAGER

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

On the 20 day of AUGUST, 2024, personally appeared before me Jason Smith, the Manager of TFC Clinton Retail, LLC, a Utah limited liability company, and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.

[Signature]  
Notary Public



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Lots 1A and 1B of Homestead Clinton Pavilion Amended Subdivision, according to the official plat thereof on file and of record with the Davis County, Utah Recorder's office.

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF LOT 1A**

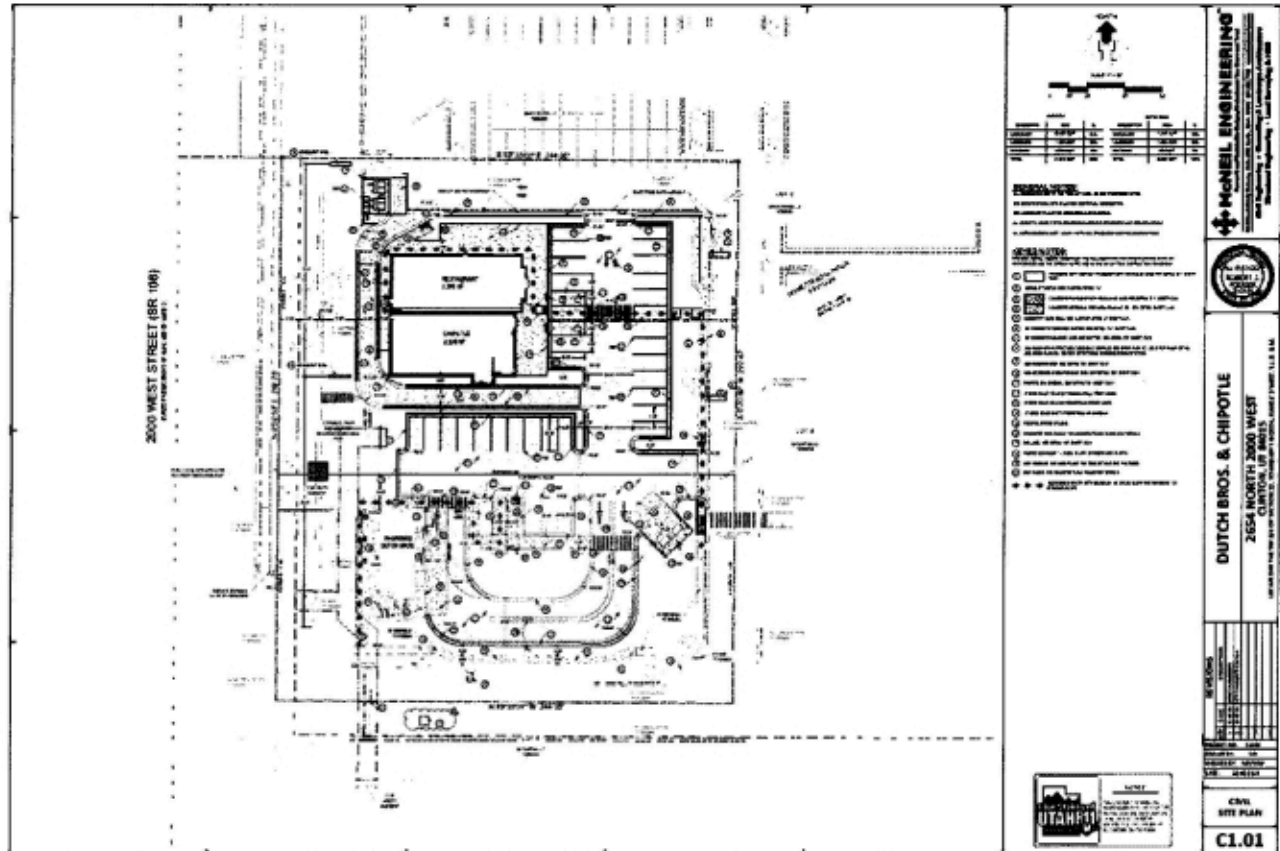
Lot 1A of Homestead Clinton Pavilion Amended Subdivision, according to the official plat thereof on file and of record with the Davis County, Utah Recorder's office.



**EXHIBIT A-2**

**LEGAL DESCRIPTION OF LOT 1B**

Lot 1B of Homestead Clinton Pavilion Amended Subdivision, according to the official plat thereof on file and of record with the Davis County, Utah Recorder's office.



**EXHIBIT C**

**RULES AND REGULATIONS**

The initial Rules and Regulations relating to the Retail Center are as follows:

1. All delivery and shipping of merchandise, supplies and fixtures, and all loading and unloading of goods, shall be done only at such reasonable times and areas which do not unreasonably disturb or disrupt the ordinary business activities of other occupants within the Retail Center.
2. No person shall use any utility area, truck facility, or other area reserved for use in connection with the conduct of business except for the specific purpose for which permission to use such area is given.
3. No employee shall use any parking space for motor vehicle parking which is immediately adjacent to and abuts a building located upon the Retail Center.
4. No person without the express written consent of the other Owners shall:
  - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other material whatsoever within the Common Areas (it being acknowledged that Outdoor Commercial Facilities are excluded from the definition of Common Area for purposes of this Declaration);
  - b. Distribute any circular, booklet, handbill, placard or other material within the Common Areas;
  - c. Solicit membership in any organization, group, or association or contribution for any purpose within the Common Areas;
  - d. Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Areas by any Owner or Permittee, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interest of any business establishments within the Project;
  - e. Throw, discard, or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles or create litter or hazards of any kind; or
  - f. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Common Areas.
6. The outside area (excluding the patio space referred to in any lease) immediately adjoining a building shall be kept clean and free from dirt and rubbish by each Owner or its Permittees to the reasonable satisfaction of the other Owner, and no Owner shall place or permit any obstructions or merchandise in such areas.

**EXHIBIT D**

**DESIGN GUIDELINES**

**Building Design:**

- **Context.** All building designs shall consider surrounding or nearby buildings and developments and implement design solutions which are sensitive to those nearby buildings and developments. The review of this requirement shall be based on the following:
  - the buildings positively contribute to the overall character of the Retail Center;
  - the buildings reflect the character of the Retail Center through use of some similar positive and desirable features;
  - the buildings demonstrate imaginative design; and
  - where proposed building designs closely copy or mirror surrounding development, the buildings vary colors, materials, or architectural elements.
- **Entrances.** All building entrances shall be clearly articulated to indicate a transition from the exterior to the interior of the building. Every main entrance shall have a special emphasis when compared to the other portions of the building. This shall be accomplished through the use of at least three of the following near entrances:
  - a prominent architectural feature that is unique to the overall building design;
  - complimentary yet differing building materials or colors;
  - increased use of windows or glass;
  - pedestrian amenities that may include patios, porches, special paving treatments, seating areas, or awnings; or
  - increased landscaping.
- **Façade Articulation.** Buildings designed with completely flat façades and monotone color schemes are not permitted. All buildings shall demonstrate articulation of all façades.
  - Horizontal or vertical façade variations shall occur at least every 30 feet or along a minimum of 60% of the horizontal length of buildings with facades 100 feet or greater. This shall be accomplished by using methods such as:
    - variation in the surface plane that may include pop-outs, bays, and recesses;
    - variation in the surface pattern such as arches, banding, and paneling; or
    - distinguished treatment of windows, doors, and eaves that may include molding or framing.
  - Buildings with façades 85 feet or greater in total length shall have at least one significant façade

variation from the primary wall plane whose depth is at least two feet length and whose width is at least 20% of the total façade length. There shall be no uninterrupted façades 85 feet or greater in length.

- Height and Roofline. All buildings shall demonstrate an appropriate roof height that is compatible with the building's location, and vary rooflines in order to add architectural interest and avoid the appearance or sense of monotonous roofline expanses. All buildings shall:
  - demonstrate appropriate roof height for the location based on zoning regulations and the height of buildings within the immediate area;
  - provide roofline and parapet variations where there are long, continuous, and undisturbed rooflines 50 feet or greater;
  - use similar materials and colors on the back of false-fronts, parapets, cornices, or other parts of the building which extend beyond the roofline or main building so that the building appears cohesive from all views; and
  - provide for screening of mechanical equipment and systems that need to be mounted on the roof. Any minimal portion of these pieces of equipment that may not be fully shielded shall be painted a color which is compatible with the roofing or parapet materials.
- Massing. Buildings shall have a composition which clearly relates to the buildings within the Retail Center.
- Materials. Quality long-lasting materials shall be required for all buildings in order to contribute to the aesthetics of the community over the long term. Permanence in design and construction will add to the overall value and sustainability of the community.
  - A minimum of three colors per elevation shall be required.
  - Color utilization should be sensitive to existing development within the vicinity and the natural landscape in which the project is situated.
  - Brick, stone, ceramic tile, wood fiber/composite siding, and concrete masonry units (CMU), are acceptable primary materials. CMU must be colored and feature decorative or architectural finishes such as honed, scored, offset or split face. Gray CMU block is not an acceptable finished building material and shall not be permitted on any finished building elevation. Secondary materials may include exposed concrete, vinyl, stucco, wood siding or metal components. Materials such as awnings, wood timbers and other similar features will be considered accent and not figured into the totals of primary and secondary materials. The following guidelines shall apply when designing a commercial or industrial building:
    - Each building face shall have a minimum of two primary materials. At least 30% of each building's finished face shall be primary materials. No more than 50% of a buildings finished face shall be constructed of any one primary material.
    - Doors, glass and roofing materials are excluded in the calculations of primary and secondary materials.
  - All projects shall submit a sample board containing actual samples of all exterior surface materials, including roofing materials, in all the colors they will be used. No photos shall be permitted.



- Pedestrian Considerations. Buildings designed at the human scale effectively relate to pedestrians and create inviting and hospitable commercial districts that encourage pedestrian activity and social interaction. All buildings shall consider pedestrians as an integral part of the design. Additionally, buildings that contain more than one story or that are above 20 feet in height shall provide a clearly articulated and more detailed base that relates to pedestrians.
- Signs. Signs located on any building façade shall be compatible with the building's overall design. As an integral design element, signs shall be compatible with the style of the buildings in terms of location, scale, color, and lettering.
  - The locations for signs on a building's façade shall be planned for as part of the building's overall design.
  - Signs located on façades should integrate similar or complimentary materials as the building.
- Windows. Windows are key to the overall design of a building and the relationship between the exterior and interior. The majority of windows shall relate to the scale of the person.
  - Windows should be at eye-level when possible and provide for transparency into the building.
  - Where buildings are adjacent to pedestrian walkways, transparent windows shall be used to relate the scale of the building and the building's interior to pedestrians. Where transparent windows may not be desirable, tinted windows, false windows, or glass block shall be used.
  - Window awnings are an effective way to add detail and variation to a building, emphasize pedestrian scale windows, and create an exciting and inviting environment. When placing awnings:
    - quality materials shall be used which are durable and are able to withstand extremes in the weather;
    - colors should be complimentary to the color of the building on which the awning is located; and
    - styles should be compatible with the architectural features and overall architecture of the building on which the awning is located.

#### **Site Design**

- Landscaping. Drought resistant shrubs and trees should be used wherever possible in conjunction with efficient low water use irrigation systems.
- Lighting. Carefully planned lighting schemes shall have the effect of creating safe environments for pedestrians and motorists. Lighting shall also be considered an integral design element which adds to the overall site plan and building design.
  - Lighting schemes should include coordinating parking, wall, and pedestrian scaled fixtures which compliment building architecture and site features.
  - Sensitively placed low-light landscape lighting that highlights a site's desirable features is encouraged.

- Signs. The primary purpose of signs is to clearly identify businesses. Signs shall be integrated into the overall design of a commercial development including materials, and shall add to the quality of the built environment without contributing to visual clutter.