

AFTER RECORDING, PLEASE RETURN TO:

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**AMENDED AND RESTATED MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENT FOR NORTH POINTE BUSINESS PARK**

THIS AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR NORTH POINTE BUSINESS PARK is made and executed effective as of October 1, 2001, by BTSAF, LLC, ITAL, L.C., and PFTS, LLC (collectively, the "Seller"), Castendyck & Castendyck, LLC, a Delaware limited liability company ("C & C"), Morinda, Inc., a Utah corporation ("Morinda"), and Tropical Development, LLC, a Utah limited liability company ("Tropical"). All of the foregoing are collectively referred to as the "Parties".

RECITALS:

A. The Entire Property consists of approximately 50.61 acres, approximately 11.96 of which have been owned by Morinda.

B. Morinda has, immediately prior to the execution of this Declaration, deeded its interests in said 11.96 acre parcel (the "Tropical Parcel") to Tropical, an affiliated entity.

C. C & C has, immediately prior to the execution of this Declaration, acquired from the Seller approximately 38.65 acres (the "C&C Property"), constituting the remainder of the Entire Property.

D. C & C and Tropical are, therefore, the record owner of all legal and beneficial right, title and interest in and to the Entire Property.

E. C & C desires to develop a light manufacturing, commercial, and office development with areas which may in the future be designated and used as Common Areas and Common Facilities, and desires to provide for preservation of the values and amenities in the Project and for the maintenance of any such Common Areas and Common Facilities. To this end, and for the benefit of the Entire Property and the Users, C & C and Tropical desire to

subject the Project to the easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration.

F. C & C and Tropical deem it desirable, for the efficient preservation of the values and amenities on the Entire Property, to designate an administrator who possesses the power to maintain and administer any Common Areas and Common Facilities, to collect and disburse the Assessments and charges provided for hereinafter, and otherwise to administer and enforce the provisions of this Declaration.

G. C & C hereafter may acquire certain real property adjacent to or contiguous with the Entire Property and retains the right (but is not obligated) to subject such real property to this Declaration as Additional Property by hereafter filing one or more Supplemental Declarations.

H. BTSAF, LLC and Morinda have previously executed and filed a Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements for North Pointe Business Park (the "Original CC&Rs") affecting the Entire Property, and the Parties desire to amend and restate in their entirety the Original CC&Rs as set forth in this Declaration. The Seller (including BTSAF, LLC) and Morinda desire to execute this Declaration for the purposes of (i) ratifying this Declaration, and (ii) relinquishing and assigning to C&C all rights and interests that Seller and/or Morinda may have as the "Declarant" or otherwise under or in relation to the Original CC&Rs, and/or this Declaration.

ARTICLE 1

AMENDMENT AND RESTATEMENT, AND DEFINITIONS

The Original CC&Rs are hereby amended and restated in their entirety as set forth in the Articles of this Declaration.

When used in this Declaration:

Section 1.1. "Additional Property" means any additional real property added to the real property described in Exhibit "A" attached hereto, and made subject to this Declaration by the filing of any Supplemental Declaration by C & C. Any Additional Property shall in all events be immediately adjacent to or contiguous with the Entire Property. The recordation of this Declaration is not intended, and shall not be construed, to create any lien, encumbrance, restriction or limitation upon any real property other than the Entire Property unless and until any such real property is subject to a Supplemental Declaration.

Section 1.2. "Buildings" means all structures and buildings built upon and affixed to the Entire Property at any time and from time to time which are intended for permanent and exclusive use and occupancy, including but not limited to, light manufacturing, office, and other commercial buildings, and shall include any area directly below any Buildings, all projections, additions or extensions of any Buildings, and platforms and docks (but excluding porches and stairways protruding from but not enclosed within any Building) affixed to the outside of any Buildings. Notwithstanding the preceding sentence, Buildings shall not include Common Areas or Common Facilities.

Section 1.3. "Committee" means the Architectural and Administrative Committee as organized, constituted and operated in accordance with the provisions of Article II hereof.

Section 1.4. "Common Areas" means:

(a) Those areas, structures and Improvements designated on the Plat as Common Areas and Common Parking Areas, as well as those areas, structures and improvements designated as Common Areas and Common Parking Areas in any modification of this Declaration and/or the Plat, subject to any minor variation resulting from the actual construction of the Buildings; and

(b) Any portion of a Parcel treated as Common Area pursuant to Section 6.1(b).

(c) All portions of the Project designated on the Street Dedication Plat dated February 27, 1999 and recorded in the Office of the Utah County Recorder as entry No. 60514 and recorded May 26, 1999, together with any areas located within public rights-of-way.

The Common Areas shall include, by way of illustration and without limitation, Landscaping, monuments, fountains, gardens, ponds, walkways, including perimeter sidewalks not dedicated to the City of American Fork, Utah County, the State of Utah or other governmental or quasi-governmental agency, roadways and ramps leading into parking facilities, the Common Parking Area, stairways and porches (including stairways and porches protruding from but not enclosed within any Building), drive aisles and entry and exit ways to adjacent streets, public benches, bus stops, utility lines and equipment designed to serve solely the Common Areas (all other utility lines and equipment to be owned, repaired, and maintained by the Representatives of the Buildings served thereby), boundary walls and fences, and truck access ways. Common Areas shall not include (i) any Buildings or any area within any Buildings; or (ii) canopies, overhangs, platforms, and loading docks attached to Buildings (which shall be deemed to be a part of the Building to which they are attached).

Section 1.5. "Common Expenses" means all costs and expenses incurred by the Committee in maintaining, managing or operating the Common Areas and Common Facilities or in performing or exercising its functions, duties, obligations or rights under this Declaration, under any property management agreement which may be entered into for management of the Project, or under such rules and regulations as the Committee may from time to time make and adopt. Common Expenses shall include, by way of illustration and without limiting the generality of the foregoing, costs and expenses of (a) managing the Common Areas and Common Facilities, (b) insurance authorized by this Declaration or otherwise deemed appropriate by the Committee to protect the Common Areas, Common Facilities, Representatives or Occupants, (c) real and personal property taxes and Assessments (whether General or Special, known or unknown, foreseen or unforeseen) in respect of the Common Areas or Common Facilities, any other governmental or quasi-governmental charges or Assessments levied against any Common Areas or Common Facilities, and any tax, Assessment or similar charge by the governmental or quasi-governmental entity levied or charged in lieu of any of the foregoing, whether assessed against Representatives or Occupants, and whether collected from the Committee, Representatives of Occupants, (d) snow removal from the Common Areas, (e) acquisition, repair and maintenance of tools and equipment used in maintaining the Common Areas and Common Facilities, as for example, landscaping equipment, (f) cleaning, sweeping, removing trash and otherwise maintaining the Common Areas and Common Facilities in good appearance, (g) capital improvements to and other costs and expenses incurred in constructing and installing additions or replacements to the Common Facilities after the Common Facilities are initially constructed, (h) utilities which are utilized primarily for the benefit of the Common Areas and Common Facilities and which are separately metered and billed to the Committee (all other utilities are to be billed to and paid for by the Representatives of the Building using or benefiting from the same), (i) services of independent contractors related to property management, (j) rental expenses of personal property used in the maintenance, operation and repair of the Common Areas and Common Facilities, (k) costs incurred by or imposed upon the Committee or in respect of the Common Areas in repairing, replacing improving, upgrading, or otherwise dealing with improvements in public roads or rights of way for the benefit of the Project such as the repair or upgrading of curb and gutter, sidewalks, deceleration or acceleration lanes, (l) legal, accounting and other services incurred by the Committee in performing its duties and enforcing this Declaration, (m) maintenance and repair of any right of way or any roadway or area over or with respect to which an easement exists for the benefit of the Entire Property or any portion thereof, and (n) any costs and expenses incurred by Committee in the good faith belief that the same are "Common Expenses." Common Expenses shall not include the development costs and expenses incurred in initially constructing and installing the Common Facilities.

Section 1.6. "Common Facilities" means (i) the entry monument, sign, and any related improvement located on the northwest corner of the Tropical Parcel which is subject to the Easement described in Exhibit "C", and (ii) all of the following if located within or upon a Common Area:

(a) Landscaping. Landscaping, lights, lighting fixtures, signs, furniture and fences.

(b) Watering Equipment. Sprinkling systems and associated pumps and hardware installed for the purpose of watering the Landscaping.

(c) Structures. Fountains, monuments, sculptures, flag plazas, flag poles and related facilities.

(d) Common Use Equipment. All tanks, electrical transformers, pumps, motors, fans, compressors, ducts, and, in general, all apparatus, installations, utility lines and facilities existing for common use.

(e) Other Facilities. Any other facility which is located on a Common Area, which is of a similar class or nature as the items listed in subsections (a) - (d) above, or which is designated in any Supplement Declaration relating to a portion of the Entire Property as being a Common Facility.

Section 1.7. "Common Parking Area" means the areas of the Common Area described as such in this Declaration and/or on the Plat, or any amendments thereto, and all other areas of the Entire Property which are part of the Common Areas and which are from time to time designated for use as parking for automobiles or other vehicles.

Section 1.8.

(a) "Consumer Price Index" means "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1967=100)" published monthly in the "Monthly Labor Review" by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U").

(b) In the event the CPI-U is discontinued, "Consumer Price Index" means the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for Urban Wage Earners and Clerical Workers (1967=100)" published monthly in the "Monthly Labor Review" by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-W").

(c) In the event the base year "(1967=100)" or other base year used in computing the CPI-U or CPI-W is changed, the figures used in computing the CPI-U or CPI-W shall be changed accordingly so that all increases in the CPI-U and CPI-W are taken into account notwithstanding any such change in the base year.

Section 1.9. "Consumer Price Index Adjustment" means the results obtained by multiplying any stated amount by a fraction, the numerator of which is the Consumer Price Index as of the date the adjustment is being made and the denominator of which is the Consumer Price Index as of the date of this Declaration; provided that the fraction described above shall in no event be less than 1.

Section 1.10. "C & C" and "Tropical" means the parties described above and/or any successors to either of said parties which, either by operation of law or through voluntary conveyances, transfers or assignments, come to stand in the same relation to the Entire Property as the party they succeed does as of the date of this Declaration.

Section 1.11. "Declaration" means this Amended and Restated Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements for North Pointe Business Park, as the same may be modified, amended, supplemented or expanded in accordance with the law and the provisions hereof (and in particular, in accordance with the provision of Article IX hereof concerning the Supplemental Declaration which is to be filed in conjunction with each addition to the Entire Property of Additional Property).

Section 1.12. "Development Guidelines" means the standards, requirements and restrictions which are attached hereto as Exhibit "B", and those which may be adopted in the future by the Committee pursuant to hereof.

Section 1.13. "Entire Property" means the real property described in Exhibit "A" plus any Additional Property.

Section 1.14. "Improvements" means improvements in, on or to the Entire Property.

Section 1.15. "Landscaping" means any space of ground covered with lawn, flowers, ground cover, shrubbery, trees, ponds, streams, waterfalls or the like.

Section 1.16. "Member" means every person who holds membership in the Committee at any particular time.

Section 1.17. "Occupant" means any person who has a legal right, whether by purchase, lease or rental, to occupy and use any Building, or any part thereof.

Section 1.18. "Parcel" means any of the separately numbered and individually described Parcels of land shown on the Plat, as amended or supplemented from time to time, and intended for private use and ownership. The Plat, as initially recorded in conjunction with this

Declaration and prior to any amendment or supplement thereto, contains five Parcels numbered 1-5.

Section 1.19. "Plat" means any of the following duly approved and recorded plats:

(a) Original Plat. The plat filed herewith, entitled "North Pointe Business Park".

(b) Supplemental Plat. Any subsequent plat respecting (i) changes or amendments to or modifications of the Original Plat, including by way of example only and not by way of limitation, the subdivision of Parcels or the creation of Common Areas and Common Parking Areas, and (ii) Additional Property, but only after recordation of such supplemental plat accompanied by a Supplemental Declaration adding the Additional Property covered by such plat to the Entire Property. Except with regard to the addition of Additional Property, the recordation of a Supplemental Plat may occur, but is not required, to effect amendments to or modifications of this Declaration.

Section 1.20. "Project" means the Entire Property and all Improvements thereon and thereto.

Section 1.21. "Representative" means the record owner, whether one or more persons, of title to any Parcel which is a part of the Entire Property, except with respect to any Parcel against which a Declaration of Office Condominium or similar declaration has been recorded, in which case the Representative shall mean the association of condominium owners for that Parcel. The foregoing notwithstanding, the Representative with respect to any Parcel which is the subject of a ground lease with an initial term of more than 15 years (not taking into account any options, renewals, or similar rights to extend) shall be the ground lessee under such ground lease. Notwithstanding any other provision of this Section, Representative shall not include a person or entity which has sold a Parcel on contract, or by some other means, and thereby divested itself of equitable ownership thereof, but has retained record ownership of the Parcel solely as security for the performance of an obligation related thereto. In such circumstances, the equitable owner of title shall be deemed to be the Representative thereof, provided that the Committee has received satisfactory evidence that the equitable ownership has been transferred. C & C, to the extent it qualifies pursuant to this Section, shall be a Representative. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term Representative shall not mean or include a Mortgagee, beneficiary or trustee under a mortgage, deed of trust or like instrument unless and until such person otherwise qualifies as a Representative pursuant to this Section by foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

Section 1.22. "Supplemental Declaration" means any written supplement to this Declaration made as set forth herein.

Section 1.23. "User" means the persons entitled to use the Common Areas and Common Facilities, namely each Representative and Occupant, and their respective customers, clients, guests, invitees, tenants, employees and agents.

ARTICLE 2

ARCHITECTURAL AND ADMINISTRATIVE COMMITTEE

Section 2.1. Membership of Committee.

(a) Members. The Committee shall consist of three members, two of whom shall be appointed by C&C and one of whom shall be appointed by Tropical.

(b) Representatives. Upon the twenty-fifth (25th) anniversary of the recordation of this Declaration, or at an earlier date upon written notice delivered by C & C and Tropical to all Representatives, the individuals appointed by C&C and Tropical, respectively, shall cease to be Members of the Committee (except with respect to those Parcels for which such Member is the Representative), and the Members of the Committee shall thereafter be composed of all of the Representatives. No evidence of membership in the Committee shall be necessary other than evidence of being a Representative. Membership related to the Parcel in which the Representative holds the interest causing it to be a Representative shall not be separable from the Parcel to which it appertains; provided that the Representative may pledge its membership to a mortgagee in connection with the financing of its Parcel such that a mortgagee upon obtaining title to a Parcel by foreclosure, trustee's sale or similar proceeding with succeed to all rights as a Representative with respect to such Parcel. Each Representative must designate an individual who will cast such Representative's vote as a Member.

Section 2.2. Voting Rights.

(a) Formula. Members of the Committee under Section 2.1(a) shall each have one vote. Members of the Committee under Section 2.1(b) shall each be entitled to a number of votes equal to 100 multiplied by a fraction, the numerator of which is the square footage of the Parcel(s) owned by the Member, and the denominator of which is the square footage of all Parcels together. The result of the foregoing calculation shall be rounded to the nearest 1/10th (.1) of a vote.

(b) Limitation. Although each of the multiple Representatives of a single Parcel may be a Member of the Committee, in no event shall the votes cast on the basis of a single Parcel exceed the total number of votes that would be granted to a single Member constituting a Representative with respect to such Parcel, determined in accordance with subsection 2.2(b) hereof. Which of the multiple Representatives of a single Parcel shall cast the votes on the basis of that Parcel shall be determined pursuant to Section 2.3 hereof.

Section 2.3. Multiple Representatives. In the event there is more than one Representative with respect to a particular Parcel, the votes relating to such Parcel under Section 2.2(b) shall be exercised as such Representatives may determine among themselves. The votes cast at any Committee meeting by any of such Representatives, whether in person or by proxy, shall be conclusively presumed to be the votes properly attributable to the Parcel concerned unless the total votes cast by all of such Representatives exceeds the total number of votes held with respect to such Parcel, determined in accordance with subsection 2.2(b) hereof, or unless a colorable objection to the allocation of votes with respect to a Parcel is immediately made by another Representative of the same Parcel. In the event the votes exceed the proper number of votes, or such an objection is made, all votes of the Parcel involved shall not be counted at such meeting for any purpose whatsoever other than to determine whether a quorum exists.

Section 2.4. Committee Powers and Responsibilities. The Committee shall administer and maintain the Common Areas and Common Facilities as set forth in Article 5, below, and shall insure that all Improvements harmonize with existing surroundings and structures and comply with the Development Guidelines set forth in Exhibit "B" and as otherwise established by the Committee.

Section 2.5. Submission to the Committee. No Building or Improvement shall be constructed or maintained on any Parcel, and no alteration, repainting, renovating, replacing or refurbishing of any Building or Improvement shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Committee.

Section 2.6. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within the following time periods after submission: no later than thirty (30) days if the projected cost is less than \$100,000.00; and, no later than sixty (60) days if the projected cost is greater than \$100,000.00. A majority vote of the Committee shall be required to approve or disapprove any plans and specifications submitted to the Committee. In the event the Committee fails to take any action within such period, it shall be deemed to have rejected the material submitted. If the Committee rejects or disapproves of any proposed Plans and Specifications it shall upon request specify in reasonable detail the basis of such disapproval.

Section 2.7 Standards. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all Improvements conform to and harmonize with the Development Guidelines and the requirements and restrictions of this Declaration. All Buildings shall be designed so that the exterior elevation of each building will be architecturally and aesthetically compatible with the others, including the height, color, materials, design, and architectural theme (including signs located thereon). Once begun, construction of a Building shall be diligently pursued to completion. Compliance with the Development Guidelines shall not relieve a Representative (or those claiming under it) of the duty to obtain all permits and licenses required by law nor of the duty to comply with all applicable laws and ordinances.

Section 2.8. Development Guidelines.

(a) Adoption. The initial Development Guidelines are attached hereto as Exhibit "B" and such shall not be modified, amended or revoked prior to January 1, 2022. The Committee may adopt additional Development Guidelines which are not inconsistent with such initial Development Guidelines, but may rescind, amend or modify such additional Development Guidelines at such times and from time to time as it deems necessary.

(b) Content. The Development Guidelines may specifically state the rules and regulations of the Committee with respect to the submission of plans and specifications for approval, the time or times within which such plans or specifications must be submitted (which shall not be inconsistent with the provisions of this Declaration), and such other rules, regulations, policies and recommendations which the Committee will consider in approving or disapproving proposed construction of or alterations to Improvements.

Section 2.9. Signs. Any and all signs placed or located on any Building, which is freestanding or which is located within a Building but visible from outside of the Building shall be subject to the prior written approval of the Committee.

Section 2.10. No Liability for Damages. The Committee shall not be liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Article.

ARTICLE 3

USES; BUILDINGS; INSURANCE

Section 3.1. Prohibited Uses. No portion of the Entire Property may be occupied for any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any part of the Entire Property or

for any use which is inconsistent with the provisions of this Declaration including, but not limited to, the initial Development Guidelines.

Section 3.2. Construction and Maintenance. All Buildings shall be commercial, light manufacturing or office buildings of the type and quality typically found in high quality commercial developments. All Buildings shall be maintained in good condition and repair in a first-class, high quality manner, clean and free of rubbish and other hazards to persons using such Buildings, and each Representative shall bear the cost and expense of maintaining its Building. Such maintenance will include, without limitation:

- (a) Removal of all papers, debris, filth, snow and refuse from such Building and the Parcel on which it is located;
- (b) Maintenance of the roads and parking areas of the Parcel (not constituting Common Area or Common Parking Area) including parking area entrances, exits, directional signs, markers, and lights as reasonably required for a modern, first class multi-use office and commercial development in accordance with any standards prescribed by the Committee;
- (c) Cleaning of lighting fixtures in, on and immediately surrounding the Building and relamping as needed;
- (d) Repainting of striping, markers, directional signs, etc., as necessary to maintain the parking areas within the Parcel in first-class condition;
- (e) Cleaning and relamping of permitted signs on the respective Buildings.

Section 3.3. Destruction. If any Building is partially or wholly damaged or destroyed, the Representative with respect to the Parcel on which the Building is located shall promptly cause the restoration of such Building so as to render the Building capable of occupancy as a high quality commercial, office or light manufacturing building in accordance with the provisions of this Declaration and shall diligently pursue such restoration to completion, or if the Representative elects not to repair, restore or replace such Building or damaged portion thereof, such Representative shall, at its cost and expense, grade level that portion of the Parcel on which such Building was located, and cover such portion with asphalt of sufficient thickness that the Parcel may be used as a parking area.

Section 3.4. Liability Insurance. Each Representative shall obtain a broad form of comprehensive liability coverage for each Parcel owned by such Representative, and the buildings located thereon, to provide protection against liability for bodily injury, death and property damage, in the amount of at least \$1,000,000 per person and \$5,000,000 per occurrence.

ARTICLE 4

RIGHTS TO COMMON AREAS AND COMMON FACILITIES

Section 4.1. Restriction as to Tropical Parcel. Except upon the prior written consent of Tropical, no Common Areas shall be created on the Tropical Parcel and no Common Facilities shall be created or located on the Tropical Parcel other than those described in subsection 1.6(i), above. Said Common Facilities under subsection 1.6(i) shall be subject to the easement described in Exhibit "C" attached hereto.

Section 4.2. Creation of Common Areas. C&C may create Common Areas on the C&C Property by preparing by and filing a Supplemental Plat and Supplemental Declaration, neither of which shall require the signature or consent of Tropical.

Section 4.3. Easements of Enjoyment. Subject to the limitations set forth herein, every User shall have nonexclusive rights and easements of use and enjoyment in and to the Common Areas and Common Facilities. These easements shall be appurtenant to and shall pass with title to each Parcel, shall in no event be separated there from, and shall bind and burden the entire Common Areas and Common Facilities.

Section 4.4. Limitation on Easements. The rights and easements of use and enjoyment as described in Section 5.3 hereof shall be subject to and limited as follows:

(a) Interference. The limitation that they shall not be exercised in any manner which substantially interferes (i) with the purposes for which the Common Areas and Common Facilities as provided; or (ii) with the rights and easements of any other User.

(b) Governmental Access. The right of the County of Utah and any other governmental or quasi-governmental body having jurisdiction over the Entire Property at any time and from time to time, and any private or public utility company serving the Project, of access to, and rights of ingress and egress over and across, any of the Common Areas contained within the Entire Property for purposes of providing police and fire protection, and providing any other governmental, municipal or utilities services.

(c) Rules and Regulations. The right of the Committee to promulgate at any time and from time to time rules and regulations governing the use or occupation of the Common Areas and Common Facilities.

(d) Activities. The right of the Committee to allow and permit various activities within and upon the Common Areas and Common Facilities, including, but not limited to, displays, kiosk and booths advertising or promoting the Project or any Building or selling merchandise or services of any type, and shows, exhibitions, or other activities of all types.

(e) No Public Rights or Dedication. The limitation that such rights shall not be construed as creating any rights in or of the benefit of the general public, or be deemed to be a gift or dedication of any of the Common Areas or Common Facilities to the general public or for any public use whatsoever.

ARTICLE 5

MAINTENANCE OF COMMON AREAS AND COMMON FACILITIES

Section 5.1. Committee.

(a) Duty to Maintain. The Committee shall maintain and operate, or provide for the maintenance and operation of, the Common Areas and Common Facilities, and areas located off of the Entire Property with respect to which the Committee has an easement or other right or obligation to enter and maintain, and shall reconstruct, repair or replace any improvements to any Common Areas or Common Facilities as, in its sole discretion, it determines are appropriate in order to maintain the overall appearance of the Project in Accordance with standards prescribed by the Committee. The Committee shall keep the Common Areas and Common Facilities in a good, clean, attractive, safe and sanitary condition, order and repair, and in a manner consistent with a high quality multi-use office and commercial development.

Section 5.2. General and Special Assessments.

(a) General Assessments. Each Representative other than Tropical shall be subject to a monthly Assessment equal to the total Common Expenses, incurred for that month, multiplied by a fraction, the numerator of which is the Operating Expenses Numerator, and the denominator of which is the Operating Expense Denominator. "Operating Expenses Numerator" shall mean and refer to the square footage of the Parcel or Parcels owned by said Representative on the first day of said month. Each Representative shall be assessed as of the first to occur of the date a Certificate of Occupancy has first been granted by the

appropriate governmental authority or a date certain agreed upon by the Committee and the Representative. Until such time the Operating Expense Numerator for such Parcel shall be zero (0). "Operating Expense Denominator" shall mean and refer to the sum obtained by taking, for each Parcel for which the numerator of this fraction is greater than zero (0), the square footage of all such Parcels together except the Tropical Parcel.

(b) Special Assessments. (i) In addition to the monthly Assessments authorized above, the Committee may levy, in any month, a Special Assessment for the purpose of defraying or establishing a reserve to pay, in whole or in part, the cost of any reconstruction, repair or replacement of any Common Facility or capital improvement located upon the Common Areas or which benefits the Common Areas but lies off the Common Areas, as may be necessitated by normal wear and tear and damage by the elements. If any such Assessment is in an amount less than \$100,000 as such amount may be increased by an Consumer Price Index Adjustment, consent thereto by the members shall not be required. If any such Assessment is greater than \$100,000 as such amount may be increased by any Consumer Price Index Adjustment, consent must be given, in writing, by Members holding fifty percent (50%) or more of the votes. Any such Special Assessment shall be prorated among all Representatives in the same manner as described in subsection (a) hereof. Such Assessment may, at the discretion of the Committee, be made prior to an expenditure for such costs and placed in a sinking fund account. All Assessments pursuant to this Subsection (b) shall be due and payable twenty (20) days after the date billed. Tropical shall not be subject to Special Assessments hereunder.

(c) Lien for Assessments.

(i) Each Representative, other than Tropical, by acquiring or obtaining an interest in or with respect to a Parcel, is deemed to covenant and agree to pay to the Committee the Assessments described herein. All Assessments against Representatives, together with interest thereon, as herein provided, costs and reasonable attorneys' fees for collection thereof, shall be a charge on the Parcels and, from and after the date this Declaration is recorded, shall be a continuing lien upon the Parcel to which the delinquent Assessments pertain, and upon any Building or Improved space located thereon, and upon any rents derived there from. Subject to subsection (g) hereof, the priority date of any lien for delinquent Assessments provided for herein shall be the date this Declaration is recorded and not the date the Assessments concerned become delinquent or the date a notice with respect thereto is recorded.

(ii) Notwithstanding anything contained herein to the contrary, in the case of a Building which has been subject to the Utah Condominium Ownership Act, the lien referred to condominium above shall be a lien only upon the unit or units within that condominium project (and such unit's or units' appurtenant undivided interest(s) in that project's

common areas) the owners of which are in default in the payment of their respective Assessments to the condominium association of that condominium project, provided that (1) such condominium association's Assessments which has been received from the non-defaulting unit owners, and (2) such condominium association certifies in writing to the Committee the names and the unit numbers of its members who are in default in their Assessments to that condominium association. Such payment and written certification must be made not later than thirty (30) days after the due date of Assessments. If such payment and certification is not made within thirty (30) days of the due date thereof, the lien of the Committee shall be on all of the condominium units for which the Committee has received direct payment from the owner or occupant thereof of its share of the Common Expenses. Any owner of any unit in any condominium project developed in the Project may pay his share of the Common Expenses directly to the Committee, in which case the Committee will notify the condominium association to which such owner belongs that said payment has been received.

(iii) To evidence a lien for delinquent Assessments, the Committee may, but shall not be required to, prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Representative which has failed to pay the Assessment concerned, and a description of the property subject to the lien. Such a notice may be signed by a duly authorized officer of the Committee, acknowledged and recorded in the office of the County Recorder of Utah County, State of Utah, within ninety (90) days after the Assessment has become delinquent. No notice of lien shall be recorded until there is a delinquency in payment of an Assessment. Such lien may be enforced by judicial foreclosure by the Committee in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such judicial foreclosure, the delinquent Representative shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by a lien being foreclosed. The delinquent Representative shall also be required to pay to the Committee any Assessments which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed.

(iv) Notwithstanding the provisions of this subsection (c) regarding which units may be liened in a condominium project when the condominium association is delinquent in the payment of Assessments, the obligation for any unpaid Assessments as described in subsections (a) and (b) shall continue to be an obligation of the association of condominium owners. In addition, the condominium association shall use its best efforts to foreclose any lien it may have on the units that are delinquent in the payment of condominium Assessments, so as to eliminate the need of the Committee foreclosing any lien it may have on the same units.

(d) Personal Obligation of Representative. Any General or Special Assessment shall be the personal obligation of the Representative of such Parcel who

was such on the first day of the month to which the Assessment relates; and in the event such Representative is a contract purchaser or ground lessee, shall also be the personal obligation of the legal title holder of the Parcel concerned. Suit to recover a money judgment for such personal obligation shall be maintainable by the Committee without foreclosing or waiving the lien securing the same, and the Committee is entitled to receive rents derived from such Parcel, or the Building or Improved Space thereon in satisfaction of such Assessments. No Representative or legal title holder may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Parcel or the Building or Improved Space thereon, or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover any money judgment for unpaid Assessments hereunder, the involved Representative and legal title holder or ground lessee shall pay the costs and expenses incurred by the Committee in connection therewith, including reasonable attorneys' fees.

(e) Date of Commencement and Notice of Monthly

Assessments. The General Assessment levied against each Representative as provided for in subsection (a) hereof shall commence on the first day of the month following the first day such Representative is issued a Certificate of Occupancy by the appropriate governmental entity for the Building located on its Parcel. The obligation of Special Assessment against each Representative as provided in subsection (b) shall commence on the first day after such Representative becomes a Representative. The Committee shall estimate the amount of the General Assessment due from each Representative at least thirty (30) days in advance of each General Assessment period, and shall then bill each Representative for its General Assessments, with payment to be made by each Representative by the first day of the month to which the General Assessment relates. Written notice of the General Assessment shall be sent to every Representative subject thereto. Within thirty (30) days after the end of each General Assessment period, the Committee shall determine the exact amount of the Common Expenses incurred for said month, and shall charge or credit each Representative in a subsequent monthly billing for the difference between the actual expense and the estimated expense of maintenance for that particular month. Any General Assessment not paid within thirty (30) days of its due date shall accrue interest thereon both before and after judgment and until paid at the higher of eighteen percent (18%) per annum or two percent (2%) over the prime interest rate set by Zions Bank, as of the date the payment of Assessments is late.

(f) Statement of Account. Upon payment of a reasonable fee

and upon written request of any Representative, Occupant, Mortgagee, prospective Mortgagee, or prospective purchase of a Parcel, Building or any part thereof, the Committee shall issue a written statement with respect to such Parcel, Building or part thereof, setting forth any unpaid Assessments, and the amount of the most recent General Assessment. Such statement shall be conclusive upon the Committee but only in favor of bona fide, third parties who rely thereon in good faith to their detriment.

(g) Subordination of the Lien to Mortgages and Deeds of Trust.

The lien of the Assessments provided for in subsection (c) hereof shall be subordinate to the lien of any mortgage which constitutes a first mortgage against any Parcel or Building, or part thereof. Sale or transfer of any Parcel or Building, or part thereof, shall not affect the Assessment lien. The sale or transfer of any Parcel or Building, or part thereof, pursuant to foreclosure of, or trustee's sale with respect to any first mortgage, shall extinguish the lien of such Assessments as to payments which became due prior to the date of such sale or transfer, but shall not extinguish the liability of the defaulting Representative for past due Assessments, nor shall it extinguish the general lien of this Declaration against the Parcel or Building concerned for Assessments arising in the future. No such sale or transfer shall relieve such Parcel or Building from liability for any Assessments thereafter becoming due, or from the lien thereof.

Section 5.3. Insurance.

(a) Types of Insurance. The Committee may obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah: _____

(i) Property insurance on those portions of the Common Areas and Common Facilities as the Committee deems should be insured, in such amounts as shall provide for replacement thereof in the event of the damage or destruction thereof from the hazards and perils against which such insurance is obtained, which insurance shall be in accordance with coverage customarily maintained on the common areas and common facilities of commercial developments, and may include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Committee shall deem it appropriate to provide insurance protection. The Committee may comply with the above requirements by the purchase of blanket coverage, and may elect such "deductible" provisions as are, in the Committee's opinion, consistent with good business practice.

(ii) A broad form of comprehensive liability insurance coverage, for the Common Areas and Common Facilities only, in such amounts and in such forms as it deems advisable, to provide adequate protection against liability for bodily injury, death and property damage. Coverage shall include, without limitation, liability for all activities in connection with the operation, use and maintenance of the Common Areas and Common Facilities in the Project.

(b) Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Committee, or of any Representative or Occupant, to obtain and maintain insurance coverage in addition to any insurance coverage

required by this Declaration, in such amounts and in such forms as the Committee or any Representative or Occupant may deem appropriate from time to time.

(c) Contribution. In no event shall the insurance coverage obtained and maintained by the Committee hereunder be brought into contribution with insurance purchased by individual Representatives (or their mortgagees) and Occupants.

Section 5.4. Replacement or Repair of Property. Damaged or destroyed Common Areas and Common Facilities, or the property of the Committee used in connection with the Common Areas and Common Facilities, shall be connection with the Common Areas and Common Facilities, shall be repaired or replaced by the Committee, utilizing insurance proceeds therefore. In the event there are no insurance proceeds or the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Committee may take a Special Assessment hereunder to cover such cost.

ARTICLE 6

DESTRUCTION OR CONDEMNATION OF COMMON AREAS

Section 6.1. Definitions. The provisions of this Article shall apply with respect to the destruction or condemnation of all or any part of the Common Areas and Common Facilities but shall not apply to Tropical. As used in this Article:

(a) "Substantial Destruction" exists whenever, as a result of any damage or Destruction to the Common Areas or Common Facilities or any part thereof, the excess of Estimated Costs of Restoration over Available Funds in twenty-five percent (25%) or more of the estimated Restored Value.

(b) "Partial Destruction" means any damage or destruction to the Common Areas or Common Facilities or any part thereof which is not Substantial Destruction.

(c) "Substantial Condemnation" exists whenever a complete taking of the Common Areas or Common Facilities or a taking of part of the Common Areas or Common Facilities has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five (25%) or more of the estimated Restored Value.

(d) "Partial Condemnation" means any such taking by eminent domain or grant of the Common Areas or Common Facilities or conveyance in lieu thereof which is not Substantial Condemnation.

(e) "Restoration" (i) in the case of any damage or destruction, shall mean restoration of the Common Areas and Common Facilities in accordance with the Declaration, the Plat and the plans and specifications for the Common Areas and Common Facilities, as the same may have been amended from time to time, to a condition the same or substantially the same as the condition in which the Common Areas and Common Facilities existed prior to the damage or destruction concerned; (ii) in the case of condemnation, means restoration of the remaining portion of the Common Areas and Common Facilities to an attractive, sound and desirable condition.

(f) "Restored Value" means the value of the Common Areas (excluding raw land value) and Common Facilities after Restoration.

(g) "Estimated Costs of Restoration" means the estimated costs of Restoration.

(h) "Available Funds" means any proceeds of insurance, condemnation awards, payments in lieu of condemnation and any uncommitted funds of the Committee, including amounts contained in any reserve or contingent fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Committee or that portion of any condemnation award or payment in lieu of condemnation payable to the Representative or Occupant of a Parcel for the condemnation or taking of the Parcel in which they are interested.

Section 6.2. Determination by Committee. Upon the occurrence of any damage or destruction to the Common Areas or Common Facilities or any part thereof, or upon a complete or partial taking of the Common Areas or Common Facilities under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. In making such determination the Committee may retain and rely upon one or more qualified appraisers or other professionals.

Section 6.3. Restoration of Common Areas. Restoration of the Common Areas and Common Facilities shall be undertaken by the Committee promptly without a vote of the Representatives in the event of Partial destruction or Partial Condemnation, and shall also be undertaken in the even of Substantial Destruction or Substantial Condemnation unless Restoration is voted against by Members collectively holding at least seventy-five percent (75%) of the total votes of the Committee. Within thirty (30) days after the Board of Directors has determined that substantial Destruction or Substantial Condemnation exists, the Committee shall send to each Representative a written description of the destruction or condemnation involved, shall take appropriate steps to ascertain the preferences of the Representatives concerning

Restoration, and shall notice a meeting of the Members in accordance with the applicable provisions of this Declaration and the Articles to determine the preference of the Members regarding Restoration. In the event insurance proceeds, condemnation awards or payments in lieu of condemnation actually received by the Committee exceed the actual cost of Restoration when Restoration is undertaken, the excess shall at the discretion of the Committee be held as a reserve against any category of future cost or expense or be distributed in its discretion to the Representatives. Payment to any Representative whose Parcel is the subject of a Mortgage shall be made jointly to such Representative and the interested Mortgagee. In the event the actual cost of Restoration exceeds Available Funds, all of the Representatives shall be assessed for a portion for the deficiency in accordance with the Special Assessment provisions hereof.

Section 6.4. Lack of Restoration. Unless Restoration is accomplished as provided herein, the Committee shall take such action as is necessary to make the remaining Common Areas and Common Facilities safe for the Representatives and Occupants and pay the cost and expense of such action from Available Funds. In the event the Available Funds are insufficient for such purposes, the Representatives of all Parcels shall be assessed for the deficiency in accordance with the Special Assessment provisions hereof. Any remaining Available Funds shall at the discretion of the Committee be held as a reserve against any category of future cost or expense or be distributed to all of the Representatives. Payment to any Representative whose Parcel is the subject of a mortgage shall be made jointly to such Representative and the interested mortgages.

Section 6.5. Authority of Committee to Restore or to Represent Representatives in Condemnation. The Committee, as attorney-in-fact for each Representative, shall represent all of the Representatives in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Common Facilities. The award in any condemnation proceeding, the proceeds of any settlement related thereto and the proceeds of any insurance on the Common Areas and Common Facilities shall be payable to the Committee for the use and benefit of the Representatives and the Mortgagee of the Parcels as their interests may appear. The Committee, as attorney-in-fact for each authority to restore the Common Areas and Common Facilities whenever Restoration is undertaken as provided herein hereof or when the Common Areas and Common Facilities are made safe as provided herein. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate.

ARTICLE 7

PARKING

Section 7.1. Minimum Parking Spaces. There shall at all times be located on each Parcel outside of each Building sufficient parking spaces to meet applicable building codes and parking ordinances, with or without variance.

Section 7.2. Exclusive Parking Spaces. The parking spaces located under, in or proximate to each Building shall be used only by the Representatives or Occupants of the Building under, in or proximate to which they are located, and their customers, clients, employees, agents and invitees.

Section 7.3. Common Parking Area. The Common Parking Areas, if any, shall consist of those portions of the Common Area which the Committee designates from time to time for use as parking areas for vehicles.

Section 7.4. Additional Property. The Committee may, in its sole discretion, allocate any of the parking located in the Common Areas to any Buildings constructed on Additional Property.

Section 7.5. Common Parking Area. The Committee may (but is not obligated to), in its sole discretion:

(a) Alteration. Change the configuration, material or design of the structure on, or the use of the Common Parking Area, now or hereafter proposed, at any time; and

(b) Allocation. Allocate the parking located in the Common Parking Area, if any, in such manner at the Committee deems appropriate; provided, that there shall be sufficient parking as required by applicable laws, ordinances and regulations. Without limiting the foregoing the Committee may assign, in its sole discretion, any of the parking spaces located in the Common Areas to any person or persons and with such conditions and for such term as it deems appropriate, and may designate such assigned parking spaces as limited Common Area; provided, that there shall be sufficient parking on the Entire Property as required by applicable laws, ordinances and regulations. If any parking spaces are so assigned and designated, such spaces shall be used only by the person or persons to whom they are assigned, or by such persons as such assignees may transfer such assignment.

Section 7.6. Income. Any income received in respect of the Common Parking Areas by the Committee shall be distributed to the Representatives in the same ratio that General

Assessments are allocated herein; provided that this provision shall not affect the right of any Representative or other owner of a Building from charging its tenants for the right to park in spaces allocated or available to such Building or give any other person a right to any such monies when collected.

Section 7.7. Construction. The Committee may require as a condition to the approval of any plans and specifications for the construction of a building or Buildings on a Parcel that the Representative submitting the same construct at its sole cost and expense;

(a) parking ramps, structures, or parking lots and such roadways, curbs, sidewalks and other Improvements on the Parcel or on the Common Area or Common Parking Area as the Committee deems necessary to provide adequate parking for and ingress to and egress from the Building pursuant to such design as the Committee may prescribe; and

(b) Such plazas, landscaping or similar Improvements on the Parcel but outside the Building or Buildings as the Committee, at its sole discretion, deems necessary for the integration of the Building into the remainder of the Project.

ARTICLE 8

EXPANSION OF PROJECT

Section 8.1. Right to Expand and State of Title to New Parcels. There is hereby granted unto C & C, and C & C hereby reserves, the absolute right and option to expand the Project at any time (within the limits prescribed in this Declaration) and from time to time by adding to the Project Additional Property. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Representatives or Occupants) and shall be limited only as specifically provided in this Declaration. Any additional Property shall be deemed added to the Project and, subject to the terms of this Article, to the jurisdiction of the Committee at such time as a plat showing information similar to that set forth on the plat and a Supplemental Declaration have been recorded with respect to the Additional Property concerned. After the recordation of such Supplemental Declaration and Supplemental Plat, title to each Parcel thereby created within such Additional Property and its appurtenant right and easement of use and enjoyment in and to the Common Areas and Common Facilities shall be vested in and held by C & C, and none of the other Representatives or Occupants or the Committee shall have any claim or title to or interest in each such Parcel, each such Parcel's appurtenant nonexclusive right and easement of use and enjoyment to the Common Areas and Common Facilities, and each such Parcel's appurtenant exclusive right and easement of use and enjoyment to limited Common Areas, in any, associated with each such Parcel.

Section 8.2. Rights and Statements Respecting Additional Property. C & C hereby furnishes the following information and statements respecting Additional Property and C & C's right and option concerning expansion of the Project by the addition thereto of Additional Property;

(a) Property Requirements. There are no limitations or requirements relative to the size, location or configuration of any Additional Property which can be added to the Project or relative to the order in which particular Additional Property can be added to the Project.

(b) Division of Property. There are no limitations or requirements (other than applicable zoning restrictions and other recorded restrictions) relative to the layout, design, size, location, density or other characteristics of the Parcels, Common Areas and Common Facilities to be created on any Additional Property added to the Project.

(c) Facilities. There is no restriction concerning the size of commercial, retail, light manufacturing or other facilities that may be constructed on Additional property. The Additional Property may include certain types of uses not permitted by this Declaration such as institutional (i.e., governmental, hospital or health care) or recreational activities.

Section 8.3. Procedure for Expansion. Any Supplemental Declaration by which addition to the Project of any Additional Property is accomplished shall be executed by C & C, shall be in recordable form, shall be filed for record in the office of the County Recorder of Utah County, Utah, and shall contain the following information:

(a) Identification. Data sufficient to identify this Declaration and the Plat respecting the Additional Property being added to the Project. The Plat shall identify the Common Areas and Common Facilities located within the Additional Property.

(b) Legal Description. The legal description of the Additional Property being added to the Project.

(c) Subjection. A statement that such Additional Property shall thereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, as said Declaration may be amended or supplemented.

(d) Authority of C & C. With respect to any Additional Property C & C may in the Supplemental Declaration reserve the power and authority for a period not to exceed twenty five (25) years from the date such Additional Property is included in

the Project to cast the only votes with respect to any question to the extent such matter affects the Additional Property.

(e) Other Matters. Such other matters as C & C may deem to be necessary, desirable or appropriate.

Upon the recordation of any Supplemental Declaration, it shall automatically supplement this Declaration and any supplements previously recorded. As of such date the allocation of General and Special Assessments shall be changed to take into account costs and expenses in connection with the Common Area of Additional Property and to change the Operating Expense Denominator and Extraordinary Expense Denominator. At any point in time the Declaration for the Project shall consist of this Declaration, as amended and expanded by all amendments and Supplemental Declarations theretofore recorded pursuant to the terms hereof.

Section 8.4. 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 C & C any obligation respecting, or to restrict C & C in any way with regard to: (a) the addition to the Project of any Additional Property; (b) the creation or construction of any Parcel or other improvement; (c) the carrying out in any particular way or within any particular time of any development or addition to the Project which may be undertaken; or (d) the taking of any particular action with respect to any Additional Property.

ARTICLE 9

LIMITATION ON RESTRICTIONS

Section 9.1. C & C's Work. C & C is undertaking the work of developing a commercial, office and light manufacturing development. The completion of that work, and the sale, rental and other disposal of Buildings and interests therein is essential to the establishment and welfare of the Entire Property as a commercial development, and such work shall not be restricted other than as required by law.

Section 9.2. Exemptions. Nothing herein shall prevent C & C, its joint venturers, agents, employees, representatives, contractors or subcontractors from doing any of the following:

(a) Completion. Whatever is deemed by C & C to be appropriate or convenient in connection with the completion of said work on any part of the Common Areas.

(b) Temporary Structures. Erecting, constructing and maintaining on any part of parts of the Common Areas such temporary structures as C & C may deem appropriate or convenient for the conduct of its business of completing said work and establishing the Entire Property as a unified commercial office, retail and financial development, and disposing of Parcels and Buildings on the Entire Property owned or controlled by C & C by sale, lease or otherwise.

(c) Temporary Signs. Maintaining such temporary signs on any part of the Common Areas as the C & C may deem appropriate or convenient for the sale, lease and disposition thereof.

Section 9.3. Amendment of Declaration and Plat. Because issues may arise during the course of development and administration of the Project which affect or relate to the application of the provisions of this Declaration to the Project, C & C reserves, as long as it is a Member of the Committee, the right at its sole discretion to modify or amend the Declaration and Plat with respect to C&C Property. Without limiting the generality of the foregoing, the types of issues which may have to be resolved through such an amendment include the creation of Common Areas and the elimination of Building encroachments onto a Common Area. At all other times when C & C is not a Member, the Declaration and Plat may be amended or modified upon the majority vote of the Members.

ARTICLE 10

PROHIBITED USES

Section 10.1. Prohibited Uses. No Building or Parcel may be occupied for any of the following uses:

- (a) Storage of junk, wrecked automobiles or other unsightly or second hand materials.
- (b) Dumping, disposal, incineration or reduction or garbage, sewage, dead animals or refuse.
- (c) Stockyards, refining of petroleum or its products or other uses that would create noxious odors.
- (d) Heavy industrial uses.
- (e) Outdoor billboards or other outdoor advertising structures.

- (f) The manufacturing, storage, distribution or sale of explosives.
- (g) The manufacturing storage, distribution or sale of any products or items which would increase the fire hazard on adjoining premises or which would create noise or vibrations or which would have other adverse effects on neighboring properties or any other Parcel or portion thereof.
- (h) The manufacturing, storage, distribution or sale of hazardous materials.
- (i) Any use which would constitute a violation of any applicable laws or ordinances.
- (j) Residential uses.

ARTICLE 11

RATIFICATION, RELINQUISHMENT & ASSIGNMENT

The Seller (including BTSAP, LLC) and Morinda hereby ratify this Declaration, and relinquish and assign to C&C all rights and interests Seller and/or Morinda may have as the "Declarant" or otherwise under or in relation to the Original CC&Rs and/or this Declaration.

ARTICLE 12

GENERAL PROVISIONS

Section 12.1. Enforcement. The Committee and any aggrieved Representative or Occupant shall have a right of action either at law or in equity against any Representative or Occupant for any failure by such person to comply with this Declaration, the Plat, or the provisions of any rules, regulations, agreements, instruments, supplements, amendments or determinations expressly contemplated by this Declaration or the Plat. In the event that, the Committee or any Representative or Occupant fails to comply with this Declaration and it becomes necessary for any of such persons to employ the services of an attorney in connection therewith, either with or without litigation, the noncomplying party shall pay to the aggrieved party reasonable attorneys' fees and, in addition, such costs and expenses as are incurred in enforcing the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 12.2. Rules and Regulations. The Committee shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

Section 12.3. Unanimous Written Consent in Lieu of Vote. In any case in which the Declaration requires, for authorization or approval of a transaction or matter, the assent or affirmative vote of the majority of the votes of the Committee, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Member entitled to cast a vote. All necessary consents must be obtained prior to the expiration of one hundred eighty (180) days after the first consent is given by any Member, and any change in ownership of a Parcel which occurs after consent has been obtained from the Member having an interest therein shall not be considered or taken into account for the purpose of this subsection.

Section 12.4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect all other provisions, which shall remain in full force and effect.

Section 12.5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated as expressly provided herein.

Section 12.6. Terminations and Amendments; Voting. Except as provided in and subject to the terms of items (a) and (b) below, a majority of the votes which Members present in person or represented by proxy are entitled to cast at a meeting of the Members of the Committee shall be required and shall be sufficient to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Committee. The foregoing right of amendment shall, however, be subject to the following:

(a) C & C shall have the right unilaterally to amend and supplement this Declaration in conjunction with its addition of Additional Property.

(b) Until C & C ceases to be a Member of the Committee, no amendment to the Plat or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection or control accorded to C & C shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by C & C. Except as otherwise

specifically set forth in this Declaration, any termination of or amendments to this Declaration must be recorded.

(c) Any amendment of this Declaration or the Plat which directly involves the Tropical Parcel shall not occur without the written consent of Tropical at all times that Tropical is a Representative.

Section 12.7. No Severance of Right From Ownership of a Building. No Representative, nor any person or entity being a member of a Representative where the Representative is an association of condominium owners, shall convey, transfer, sell, assign, or otherwise dispose of its membership rights in the Committee, without at the same time conveying, selling and transferring its interest in the Parcel to which its membership attaches, and the membership shall be transferred only to a new Representative of the Parcel to which membership is attached. Notwithstanding the foregoing, a Representative may by proxy transfer any of its voting rights in the Committee to any Occupants of the Parcel to which such voting rights appertain.

Section 12.8. Mortgagee Protection.

(a) Subordination of Lien. The lien or claim against a Parcel for unpaid Assessments or charges levied by the Committee pursuant to this Declaration shall be subordinate to any mortgage recorded on or before the date such Assessments or charges become due. In the event that the State of Utah should enact any statute applicable to the Project with a provision that would allow such Assessments or charges, including Special Assessments, to have a limited priority over a lien recorded before such Assessments or charges became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid Assessments or charges to survive foreclosure or exercise of a power of sale, all such Assessments and charges, including Special Assessments, shall after the date of such enactment be made due and payable to the Committee on a monthly basis and the lien for any fees, late charges, fines or interest that may be levied by the Committee in connection with such unpaid Assessments or charges shall be deemed subordinate to the mortgage on the Parcel upon which such Assessments or charges are levied.

(b) Extinguishment of Lien. The lien or claim against a Parcel for such unpaid Assessments or charges shall not be affected by any sale or transfer of such Parcel, except that a sale or transfer pursuant to a foreclosure of the mortgage affecting such Parcel or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such Assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments or charges which are extinguished in accordance with the foregoing sentence may be reallocated by the Committee and assessed to all Parcels as Common Expenses. Any such sale or transfer pursuant to a foreclosure or power of sale shall not

relieve the purchaser or transferee of such Parcel from liability for, nor such Parcel from lien of, any Assessments or charges thereafter falling due.

Section 12.9. Leases. All leases or rental agreements for Parcels shall be in writing and specifically subject to the provision, restrictions, and requirements of this Declaration and the Plat. Except with approval of the Committee, no Parcel, Building or Improved Space may be leased or rented for a period of less than thirty (30) days.

Section 12.10. C & C's Rights Assignable. All of the rights of C & C under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

Section 12.11. Estoppel Certificate. Any of the Representatives shall, upon ten (10) days written request, provide to C & C a certificate, duly executed by such Representative, that C & C is not in default under this Declaration and has duly and properly performed all of its obligations hereunder.

Section 12.12. Miscellaneous. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall not be deemed to be part of this Declaration and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Declaration. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any parts thereof, and any gender shall include other genders. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership, or other legal entity when the context so requires. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes, and shall be governed by and construed in accordance with the laws of the State of Utah. In the event of any conflict between this Declaration and the Articles of the Committee, this Declaration shall control. This Declaration may be executed in counterparts, all of which taken together shall constitute one agreement binding on all the parties hereof, their successors and assigns, notwithstanding that all the parties are not signatories to the original or the same counterpart. All Exhibits referred to herein and attached hereto are incorporated herein by this reference.

Section 12.13. Notices. Any notice required to be given under this Declaration shall be given by registered mail, return receipt requested and postal charge prepaid, or by hand delivery, with delivery to be effective on the date of delivery, if hand delivered, or, if mailed, three (3) days after the same is deposited in the mail.

(a) C. & C. If to C & C:

Castendyck & Castendyck
Attention: Jeanne Jones
6692 La Jolla Scenic Drive South
La Jolla, California 92037

(b) If to Tropical:

Tropical Development, LLC
Attention: Legal/Real Estate Department
550 East Timpanogos Circle
Orem, Utah 84057

(c) Others. If to any other Representative or Occupant, notice shall be given to the address that is on record with the Committee for said Representative or Occupant, as the same may be changed by written notification to the Committee from time to time.

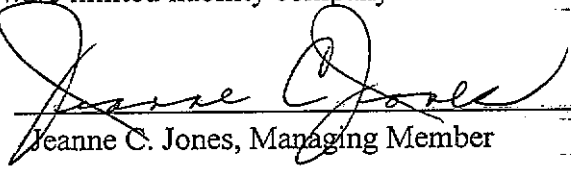
Section 12.14. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment to the Plat shall take effect upon its being filed for record in the Office of the County Recorder of Utah County, Utah.

Section 12.15. Exhibits. All exhibits referred to in the body of this Declaration are hereby incorporated by this reference.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed by their duly authorized officers the day and year first above written.

CASTENDYCK & CASTENDYCK, LLC,
a Delaware limited liability company

By:


Jeanne C. Jones, Managing Member

STATE OF CALIFORNIA)

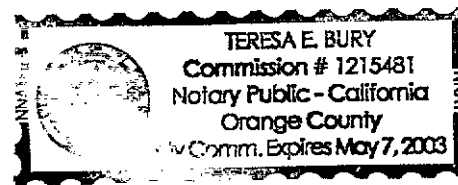
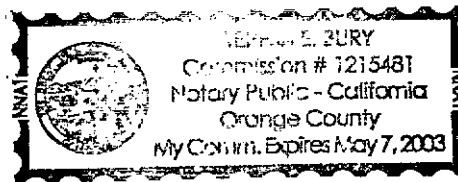
COUNTY OF Orange) : ss.

The foregoing instrument was acknowledged before me this 19th day of September, 2001, by Jeanne C. Jones, the Managing Member of CASTENDYCK & CASTENDYCK, LLC, a Delaware limited liability company.

My Commission Expires:

May 7, 2003


NOTARY PUBLIC
Residing at: Austin, Ca.



MORINDA, INC., a Utah corporation

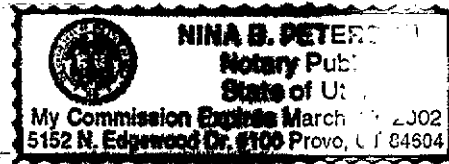
By: [Signature]
Its: Corporate Secretary

STATE OF UTAH)
) : ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 2 day of Oct., 2001, by J. Benjamin Tyler, the Corporate Secretary of MORINDA, INC., a Utah corporation.

[Signature]
NOTARY PUBLIC
Residing at: Provo, Utah

My Commission Expires:
March 10, 2002



TROPICAL DEVELOPMENT, LLC,
a Utah limited liability company

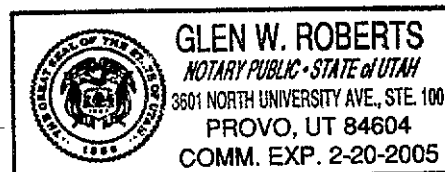
By: [Signature]
Its: Managing Member

STATE OF UTAH)
) : ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 2 day of Oct., 2001, by Bryan B. Davis, the Managing Member of TROPICAL DEVELOPMENT, LLC, a Utah limited liability company.

[Signature]
NOTARY PUBLIC
Residing at: _____

My Commission Expires:



BTSAF, LLC

By Its Manager:
BTS INVESTMENTS, INC.,
a Utah corporation

By: [Signature]
R. Scott McQuarry, President

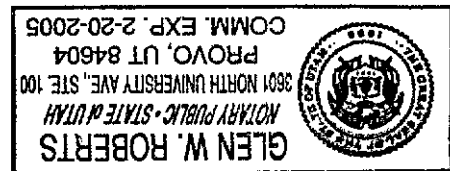
STATE OF UTAH)
COUNTY OF Utah) : ss.

The foregoing instrument was acknowledged before me this 3rd day
of October, 2001, by R. Scott McQuarry, the President of BTS Investments, Inc., the
Manager of BTSAF, LLC, a Utah limited liability company.

[Signature]
NOTARY PUBLIC
Residing at: Provo

My Commission Expires:

ITAL, L.C.
By: [Signature]
Lloyd Eldredge, Manager

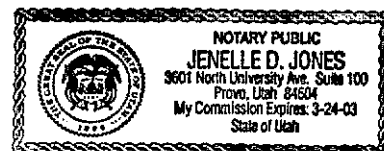


STATE OF UTAH)
COUNTY OF Utah) : ss.

The foregoing instrument was acknowledged before me this 28 day
of September, 2001, by Lloyd Eldredge, the Manager of ITAL, L.C., a Utah limited
liability company.

[Signature]
NOTARY PUBLIC
Residing at: _____

My Commission Expires:
3-24-03



PFTS, LLC

By: Lloyd Eldredge

Lloyd Eldredge, ~~Manager~~ *As Manager*
of UIC Investment, its manager
STATE OF UTAH)

: ss.

COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 28 day
of September, 2001, by Lloyd Eldredge, the Manager of PFTS, LLC, a Utah limited
liability company.

My Commission Expires:

3-24-03

Jenelle D. Jones
NOTARY PUBLIC
Residing at: _____

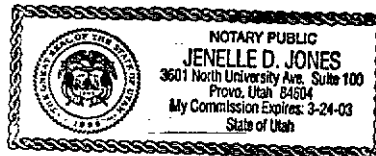


EXHIBIT "A"

Description of Real Property
("Entire Property")**TROPICAL PARCEL*****Tropical, Inc. Parcel (Formerly Morinda, Inc. Parcel) Boundary Description:***

Commencing at a point located South 00-25-09 East along the section line 78.94 feet and West 2148.10 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 00-00-14 West 111.05 feet; thence North 89-23-22 East 47.36 feet; thence North 77-58-05 East 285.69 feet; thence North 76-13-17 East 68.01 feet; thence North 89-54-38 East 354.90 feet; thence South 64-27-14 East 110.95 feet; thence South 50-05-30 East 127.84 feet; thence South 49-38-50 East 264.15 feet; thence South 40-08-13 West 389.97 feet; thence North 49-51-47 West 164.57 feet; thence along an arc of a 260.00 foot radius curve to the left 182.14 feet (Chord Bears North 69-55-54 West 178.43 feet); thence West 706.12 feet; thence along an arc of a 15.00 foot radius curve to the right 23.56 feet (Chord Bears North 45-00-00 West 21.21 feet); thence North 53.19 feet; thence along an arc of a 233.00 foot radius curve to the left 93.53 feet (Chord Bears North 11-30-00 West 92.91 feet); thence North 23-00-00 West 81.28 feet; thence along an arc of a 350.00 foot radius curve to the right 140.50 feet (Chord Bears North 11-30-00 West 139.56 feet); thence North 79.06 feet; thence along an arc of a 15.00 foot radius curve to the right 23.47 feet (Chord Bears North 44-49-37 East 21.15 feet); thence North 89-39-14 East 181.93 feet to the point of beginning.

Acres = 11.96 Acres \pm

C&C PROPERTY***Parcel 1 Boundary Description:***

Commencing at a point locate South 00-25-09 East along the section line 414.09 feet and West 1003.37 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 49-38-50 East along an existing fence line 197.26 feet; thence South 50-06-16 East along an existing fence line and a fence line extended 561.31 feet; thence along the right-of-way line of North Pointe Business Park Street Dedication Plat the following calls: along an arc of a 60.00 foot radius curve to the left 181.11 feet (chord bears South 23-30-39 West 119.77 feet); along an arc of 50.00 foot radius curve to the right 54.95 feet (chord bears South 31-28-

56 East 52.22 feet); South 275.99 feet; along an arc of 15.00 foot radius curve to the right 23.61 feet (chord bears South 45-05-19 West 21.25 feet); North 89-49-22 West 420.00 feet; along an arc of a 15.00 foot radius curve to the right 23.52 feet (chord bears North 44-54-41 West 21.18 feet); North 192.70 feet; along an arc of 260.00 foot radius curve to the left 226.27 feet (chord bears North 24-55-53 West 219.20 feet); North 49-51-47 West 352.44 feet to the east boundary of Tropical, Inc. Parcel; thence North 40-08-13 East along Tropical, Inc. east Parcel boundary line as described in book 4836 page 239-241, 389.97 feet to the point of beginning.

Area = 9.39 Acres \pm

Parcel 2 Boundary Description:

Commencing at a point locate South 00-25-09 East along the section line 1345.63 feet and West 974.77 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence along the right-of-way line of North Pointe Business Park Street Dedication Plat: North 89-49-22 West 823.46 feet; North 89-44-48 West 462.94 feet; along an arc of 15.00 foot radius curve to the right 23.50 feet (chord bears North 44-52-24 West 21.17 feet); North 706.10 feet; along an arc of a 15.00 foot radius curve to the right 23.56 feet (chord bears North 45-00-00 East 21.21 feet); East 706.12 feet; along an arc of a 200.00 foot radius curve to the right 140.10 feet (chord bears South 69-55-54 East 137.26 feet); South 49-51-47 East 517.01 feet; along an arc of a 200.00 foot radius curve to the right 174.05 feet (chord bears South 24-55-53 East 168.61 feet); South 192.42 feet; along arc of a 15.00 foot radius curve to the right 23.61 feet (chord bears South 45-05-19 West 21.25 feet) to the point of beginning.

Area = 19.64 Acres \pm

Parcel 3 Boundary Description:

Lot 2, Plat "B," North Pointe Business Park Subdivision, according to the official plat thereof on file and of record in the office of the Utah County Recorder

More particularly described as follows:

Commencing at point located South 00-25-09 East along the section line 1408.96 feet and West 1823.56 feet from the East Quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 403.47 feet; thence along an arc of 430.00 foot radius curve to the left 159.01 feet (chord bears North 75-24-23 West 158.10 feet); thence North 86-00-00 West 25.56 feet; thence North 362.64 feet; thence South 89-44-48 East 178.50 feet to the point of beginning.

Area = 1.54 Acres \pm

Parcel 4 Boundary Description:

Commencing at a point located South 00°25'09" East along the section line 1395.08 feet and West 1798.69 feet from the East Quarter of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 00°40'37" West along an existing fence line 1303.54 feet to a fence corner; thence North 37°01'17" West along an existing fence line of the Rio Grande Railroad 1169.23 feet; thence along an existing fence line as follows: North 32°09'53" East 22.85 feet; North 17°17'56" East 108.37 feet; North 14°11'41" East 132.95; North 15°23'52" East 76.63 feet; thence North 30°35'47" East 35.14 feet; thence North 68°05'08" East 27.57 feet; thence North 82°29'14" East 25.53 to the end of the fence; thence North 73°15'53" East 9.96 feet to the Northwest corner of North Pointe Business Park, Plat "B"; thence along the boundary of North Pointe Business Park, Plat "B", the following calls: South 238.01 feet; thence along an arc of a 350.00 foot radius curve to the right 12.45 feet (chord bears South 01°01'10" West 12.45 feet); thence along an arc of a 65.00 foot radius curve to the right 137.53 feet (chord bears South 62°39'04" West 113.27 feet); thence South 33°15'49" West 45.00 feet; along an arc of a 395.00 foot radius curve to the left 201.75 feet (chord bears South 71°22'05" East 199.56 feet); thence South 86°00'00" East 300.00 feet; along an arc of a 385.00 foot radius curve to the right 142.37 feet (chord bears South 75°24'23" East 141.56 feet); thence North 25°11'15" East 45.00 feet; North 417.46 feet to the South right-of-way line of 1300 South Street; thence South 89°44'48" East along the South right-of-way line of 1300 South Street 24.77 feet to the point of beginning.

Area = 8.08 Acres \pm

EXHIBIT "B"

Development Guidelines

1. Specific Design Objectives and Controls

(a) Building Design Objectives

(i) All new buildings shall be of design and materials which will be in compliance with applicable zoning regulations.

(ii) The design of buildings shall take optimum advantage of the topography.

(b) Open Space Pedestrian Walks and Interior Drive Design Objectives

(i) All open spaces, pedestrian walks and interior drives shall be designed as an integral part of an overall site design, properly related to proposed buildings.

(ii) Attractively landscaped open spaces shall be provided, which will offer maximum usability to occupants of the building for which they are developed.

(iii) Landscaped, paved, and comfortably graded pedestrian walks should be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings on the same site.

(iv) The location and design of pedestrian walks should afford maximum safety and separation from vehicular traffic, and should recognize desirable views of new and existing development in the area and surrounding community.

(v) Materials and design of paving, retaining walls, fences, curbs and benches shall be of good appearance, easily maintained, and indicative of their purpose.

(c) Parking Design Objectives

(i) Parking areas shall be designed with careful regard to orderly arrangement, topography, relationship to view, ease of access, and as an integral part of overall site design.

(ii) It is desirable that parking areas be level or on terraces as determined by the slope of the land.

(d) Landscape Design Objectives

(i) A coordinated landscaped design over the entire project area incorporating landscaped treatment for open space, roads, and parking areas into a continuous and integrated design shall be a primary objective.

(ii) Primary landscape treatment shall consist of non-deciduous shrubs, ground cover, and shade trees as appropriate to the character of the project area.

(e) Project Improvement Design Objectives

(i) Public rights-of-way. All streets, sidewalks and walkways within public rights-of-way will be designed or approved by the City and will be consistent with all design objectives.

(ii) Street lighting and signs. Lighting standards and signs of pleasant appearance and modern illumination standards shall be provided as necessary.

(iii) Rough grading. Any existing structures, retaining walls, underbrush, pavement, curb and gutters will be removed and the site graded in conformance with the final project design.

2. Description of Land Uses

The permitted land uses within the project area shall be those uses permitted by the officially adopted zoning ordinances of the City, as those ordinances may be amended from time to time.

3. Planning Criteria

In order to provide owner participants and developers maximum flexibility in the economic development of land located within the project area and to encourage and obtain the highest quality design and development, specific development controls for the land uses identified above are not set forth herein. Each economic development proposal may be considered subject to: (1) appropriate elements of the City's master or general plan; (2) the planning and zoning code of the City; and (3) other applicable building codes and ordinances of the City.

4. Review of Economic Development Proposals

Each economic development proposal by an owner participant or a developer shall be accompanied by site plans, development data and other appropriate material that clearly describes the extent of economic development proposed, including land coverage, setbacks, heights and bulk proposed, off-street parking and loading to be provided, use of public transportation, and any other data determined to be necessary or requested by the City.

5. Retail Sales

The development of retail sales is not an objective of the Project area. Incidental or subordinate development of retail sales are permitted in the Project area and shall not disqualify the Project area from receiving tax increment financing under Section 1247.5 of the Act.

EXHIBIT "C"

Easements

Tropical hereby grants a perpetual, non-exclusive easement for the placement of a monument sign and for access to said sign for the purposes of repair and maintenance of said sign in the area. The size, type and placement of the sign shall be at the reasonable discretion of C&C and shall comply with all city and county ordinances pertaining to such signs. The easement granted herein shall not unreasonably interfere with the use, maintenance or operation of Tropical Property. Tropical shall not be entitled to place signs, monuments or other improvements on the Sign Easement Area without prior written consent of C&C, and any such placement shall not unreasonably interfere with the easement granted herein.

The area of said easement is described as follows:

Entry Sign Easement

Commencing at a point located South 00°25'09" East along the Section line 79.34 feet and West 2214.52 feet from the East quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 42°52'25" West 187.60 feet; thence along the arc of a 350.00 foot curve to the right 42.96 feet (chord bears North 03°31'05" West 42.95 feet); thence North 79.06 feet; thence along the arc of a 15.00 foot curve to the right 23.47 feet (chord bears North 44°49'37" East 21.15 feet); thence North 89°39'14" East 115.50 feet to the point of beginning.