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REQUEST: SD UTAH TITLE CO/CEDAR CITY

DECLARATION
OF
EASEMENTS, COVENANTS AND RESTRICTIONS
FOR
THE PROVIDENCE CENTER

When Recorded Return to:
Thomas A. Pugh
Providence Quantum Partners, L.C.
288 North Westview Drive
Cedar City, Utah 84720

**DECLARATION
OF
EASEMENTS, COVENANTS AND RESTRICTIONS
FOR
THE PROVIDENCE CENTER**

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS for **THE PROVIDENCE CENTER** is made and entered into the 21st day of April, 2000, by **PROVIDENCE QUANTUM PARTNERS, L.C.**, a Utah limited liability company (hereinafter referred to as "Declarant"). This Agreement is made in contemplation of the following facts and circumstances.

A. Declarant is the fee simple owner of certain real property located in Iron County, State of Utah and more particularly described on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Property"). This Declaration is being imposed by Declarant upon the Property.

B. Declarant desires to create within and upon the Property a high quality commercial, business, and office complex in an attractive park-like setting to be known as The Providence Center (hereinafter sometimes referred to as the "Project"). In order to do so, Declarant desires to establish master protective covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of said Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of the business environment within the Project.

C. To provide efficient management for The Project and to preserve its value, desirability and attractiveness, Declarant has incorporated a Utah nonprofit corporation called The Providence Center Owners Association and Declarant has delegated and assigned to such Association the powers of managing The Providence Center, of maintaining and administering the Common Facilities, of administering and enforcing all covenants, conditions and restrictions, of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to and of performing such other acts as shall generally benefit The Providence Center.

D. Declarant will hereafter hold and convey title to all of the Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant does hereby declare that the Property, as defined and described herein, shall be held, sold, conveyed, transferred, leased, subleased, used and occupied subject to the easements, covenants, conditions and restrictions set forth herein and which easements, covenants, conditions and restrictions shall run with the Property and all portions

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thereof and shall be binding upon all parties having or acquiring any right, title or interest in and to all or any portion of the Property, and the respective heirs, successors and assigns of such parties.

ARTICLE I DEFINITIONS

Unless the context clearly indicated otherwise, certain terms used in this Declaration shall have the meanings set forth in this Article I. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1 Annual Budget shall have the meaning set forth in Section 8.3 below.

1.2 Architectural Committee shall mean the committee provided for in Article 4 hereof.

1.3 Articles and Bylaws shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board's selection, the Board's general powers, the method of calling a meeting of Members of the Association and the Members required to constitute a quorum for the transaction of business.

1.4 Assessments shall mean General Assessments, Supplemental Assessments and Reimbursement Assessments.

1.5 Association shall mean The Providence Center Owners Association, a Utah nonprofit corporation, and its successors and assigns.

1.6 Board shall mean the Board of Trustees of the Association.

1.7 Building shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.

1.8 Building Footage for each respective Parcel shall mean the total square footage contained within the Building or Buildings constructed on that Parcel as measured from outside wall to outside wall and not including basements or mezzanines but including multiple stories or levels.

1.9 City shall mean Cedar City, a municipal corporation of the State of Utah.

1.10 Common Areas shall mean shall mean all parts of each Parcel which are from time to time devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas.

1.11 Common Expenses shall mean shall mean the actual and estimated costs of: (a) maintenance, management, operation, repair, and replacement of the Common Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association as provided in this Declaration or pursuant to agreement with the City, or any other city, or other governmental agency or authority; (b) unpaid Supplemental Assessments and Reimbursement Assessments; (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) the costs of utilities, trash pickup and disposal, gardening and other services benefitting the Owners and their Parcels to the extent such services are paid for by the Association; (e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Facilities; (f) the costs of any other insurance obtained by the Association; (g) reasonable reserves as deemed appropriate by the Board; (h) the costs of bonding the members of the Board, any professional managing agent or any other person handling the funds of the Association; (i) taxes paid by the Association; (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Facilities or portions thereof; (k) Costs incurred by the Architectural Committee or other committees of the Association; and (l) the costs of any other item or items approved by the Board and incurred in connection with the Common Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

1.12 Common Facilities shall mean:

(a) all real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to the Association from time to time for the common use and benefit of the Owners, including, without limitation, streets, landscaped areas, parks, open spaces, paths, trails and slopes; and

(b) all property rights, improvements, fixtures and personal property owned by or leased to the Association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation, all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street furniture.

The Common Facilities shall be designated in each final subdivision plat recorded with regard to the Property and shall be conveyed by Declarant to the Association concurrently with the recording thereof. Declarant shall convey the Common Facilities to the Association free of all

liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

1.13 Declarant shall mean Providence Quantum Partners, L.C.

1.14 Declaration shall mean this Declaration of Easements, Covenants and Restrictions for Providence Quantum Partners, L.C.

1.15 Default Rate shall mean that rate of interest which shall be determined in accordance with the provisions of Section 8.14 and which shall be required to be paid in accordance with the provisions of this Declaration.

1.16 Design Guidelines shall mean the guidelines prepared by Declarant setting forth certain architectural standards and specifications regarding the location and design of the improvements, construction materials, lighting, landscaping, signage and other matters relating to improvements on the Property. The Design Guidelines are incorporated in this Declaration by reference. Copies of the Design Guidelines are available at the office of the Association.

1.17 Easement or Easements shall mean any easement or, as the context shall require, all easements (a) granted pursuant to the provisions of this Declaration, (b) set forth in final subdivision plat recorded with regard to the Property, or any part thereof, or (c) to which the Property is subject pursuant to documents which have been or will be recorded with the Iron County Recorder, State of Utah.

1.18 Environmental Regulations shall have the meaning set forth in Section 1.22 hereof.

1.19 Expansion Property shall mean any real property located within a one (1) mile radius of the Property any part of which is contiguous with the Property, or any part thereof.

1.20 General Assessments shall mean the share of the Common Expenses which are to be paid by each Owner pursuant to Section 8.4 hereof.

1.21 Hazardous Condition shall have the meaning set forth in Section 7.5(a) hereof.

1.22 Hazardous Material shall mean (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated

pursuant thereto (collectively "Environmental Regulations" and individually, an "Environmental Regulation"); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term "Environmental Regulations" shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

1.23 Improvements shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, of any Parcel or of any structure or thing affixed on the Property or any Parcel, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.24 Interest Rate shall mean that rate of interest which shall be determined in accordance with the provisions of Section 8.14 and which shall be required to be paid in accordance with the provisions of this Declaration.

1.25 Member shall mean every individual or entity who qualifies for membership in the Association pursuant to Article 3, including Declarant so long as Declarant qualifies for membership pursuant to said Article.

1.26 Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Parcel of any part or interest in the Property is encumbered, including specifically a leasehold mortgage. No Mortgage executed by an Owner or lessee of a Parcel shall be construed to constitute a lien or other encumbrance upon any other Parcel, Common Areas or Common Facilities.

1.27 Mortgagee shall mean any person or entity named as the mortgagee or beneficiary under a Mortgage or any successor in interest to such person or entity.

1.28 Occupant shall mean and include the Declarant, the Owners, their respective heirs, successors and assigns (including Mortgagees) and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.29 Owner shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Parcel, including Declarant, and the vendee under an

installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.30 Owner's Percentage and Owner's Percentages shall have the meaning set forth in Section 8.2 below.

1.31 Parcel shall mean any lot or parcel shown on any recorded final subdivision plat filed by the Owner of such lot or parcel to the extent such lots or parcels are part of the Property and shall also mean the entire balance of all real property which is from time to time subject to this Declaration, excluding, however, dedicated public rights-of-way and Common Facilities. If two or more contiguous Parcels are held by the same Owner, such commonly owned Parcels may, at the option of the Owner, be combined and treated as a single Parcel for purposes of this Declaration, provided that the construction and location of improvements thereon shall nevertheless be subject to the use restrictions and the review and approval requirements set forth in this Declaration. References in this Declaration to a specific Parcel shall refer to the particular Parcel as set forth in this Declaration and, as applicable, on the recorded final subdivision plat for such Parcel.

1.32 Permittees shall mean all Occupants and all customers, employees, licensees and other business invitees of Occupants.

1.33 Project shall mean the Property, together with the Improvements, the Common Areas, and the Common Facilities, which are not located upon or may in the future be located upon the Property and which shall collectively be commonly known as The Providence Center.

1.34 Project Signs shall mean signs located on the Common Areas which advertise the business of more than one Occupant.

1.35 Property shall mean the real property described in recital Paragraph A, less any portion thereof that shall be dedeed or otherwise dedicated to the City for public use.

1.36 Reimbursement Assessments shall mean amounts required to be repaid by an Owner pursuant to Section 8.6 hereof.

1.37 Supplemental Assessments shall mean the share of any additional assessment levied in accordance with provisions of Section 8.5 hereof which is to be paid by each Owner.

1.38 Supplementary Declaration shall mean each of those certain supplementary declarations of protective covenants, conditions and restrictions, or similar instruments recorded subsequent to this Declaration, which annex portions of the Expansion Property and thereby extend the plan of this Declaration to such additional property as provided in Article 13.

1.39 Taxes shall mean all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or public authority against or upon the Property and/or Improvements.

1.40 Total Building Footage shall mean the sum of the Building Footage for all Parcels within the Project.

ARTICLE 2 SUBMISSION

2.1 Declaration. Declarant hereby declares that the Property and any and all Improvements that shall at any time be located upon any portion of the Property shall be held, sold, conveyed, transferred, designed, constructed, operated, maintained, leased, subleased and occupied subject to the easements, covenants, conditions and restrictions set forth in this Declaration and which are for the purpose of establishing common areas, mutual easements, covenants and restrictions which shall provide for the common management and operation of certain portions of the Project, to place certain use restrictions on the Property and to protect and preserve the value of the Project.

2.2 Enforcement. Unless otherwise specifically set forth herein, the Association, any Owner or any other party, who is specifically benefitted under the express terms of this Declaration, shall have the right to enforce, by any proceeding at law or in equity, all easements, covenants, conditions, restrictions, liens, charges, rights and/or duties now or hereafter imposed by the provision of this Declaration. Failure of either the Association or any Owner or other specified party to enforce any easement, covenant, condition, restriction, lien, charge, right and/or duty contained herein on any one or more occasion shall not be deemed a waiver of the right to do so on any subsequent occasion.

ARTICLE 3 MEMBERSHIP IN THE ASSOCIATION

3.1 Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, and Bylaws. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and Bylaws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership in the association shall be appurtenant to each Parcel and may not be separated from the interest of an Owner in any Parcel. Ownership of a Parcel shall be the sole qualification for membership in the Association; provided, however, a Member's voting rights or privileges in the Common Facilities, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership in the Association shall exist with respect to ownership of a single Parcel.

3.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Parcel and then only to the transferee or Mortgagee of such Parcel. Any attempt to separate the membership in the Association from the Parcel to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Parcel, the Association shall have the right to record the transfer upon the books of the Association.

3.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

3.4 Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each full acre of land plus a one-tenth (1/10) vote for each additional full one-tenth (1/10) acre of land in which they hold the interest required for membership. When more than one person owns a portion of the interest required for membership, each such person shall be a Member and the vote for such land shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any such land than the number of votes that one person owning the entire interest required for membership would be entitled to cast with respect to such land. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written consent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each full acre of land plus three-tenths (3/10) votes for each additional full one-tenth (1/10) acre of land in which it holds the interest required for membership; provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A Membership equal or exceed the total votes outstanding in the Class B Membership, or

(2) December 31, 2015.

3.5 Approval of Members. In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws, or any contract executed

by the Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

ARTICLE 4 ARCHITECTURAL COMMITTEE

4.1 Appointment of Architectural Committee. The Project shall have and at all times maintain an Architectural Committee composed of no less than three (3) or more than five (5) individuals who need not be Members. The Declarant shall initially have the right to and does hereby appoint the following three (3) individuals to the Architectural Committee: Thomas A. Pugh, Rick Lunt, and Jamie Nelson. The Declarant shall retain the right to appoint and remove, augment or replace four (4) members of the Architectural Committee so long as Declarant owns at least two (2) acres of land in the Project; provided, however, that Declarant may, at any time and at its sole option transfer this right to the Board by written notice thereof. At such time as Declarant owns less than two (2) acres of land within the Project, the right to appoint, remove, augment or replace four (4) members of the Architectural Committee shall automatically transfer to the Board.

4.2 Compliance with Design Guidelines. All Improvements, including, without limitation, all Improvements constituting Common Facilities, shall be constructed in strict compliance with the requirements of this Declaration and the Design Guidelines as they exist at the time of approval of plans, as hereinafter set forth. The Design Guidelines, which are incorporated by reference in this Declaration, are intended as positive statements of design philosophy to be applied throughout the Property. The Design Guidelines regulate, among other things, the following matters:

(a) Architectural Design:

- (1) Parcel coverage;
- (2) Material and colors;
- (3) Identification signage;
- (4) Exterior lighting; and
- (5) Mechanical Equipment.

(b) Site Accessories:

- (1) Utilities;
- (2) Street entrances;
- (3) Parking lots and loading areas;
- (4) Signage;
- (5) Security fencing; and
- (6) Outdoor furniture and furnishings.

4.4 Approval of Plans Required. No Building or other Improvement shall be erected, placed, installed or permitted to occur or exist on any Parcel, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until plans for such Building or other Improvements have been approved in writing by the Architectural Committee. The obligation to obtain the Architectural Committee's approval of plans is limited to external features of Buildings and other Improvements, and work which is completely within a Building may be undertaken without such approval. The replacement of minor features of Improvements with substantially identical material or the replacement of plants used in landscaping with comparable plants shall also not require the prior approval of the Architectural Committee. The Architectural Committee shall exercise its judgment to see that all Buildings and other Improvements, including, without limitation, landscaping, within the Property are consistent with this Declaration and the Design Guidelines. The actions of the Architectural Committee, through its written approval or disapproval of plans or other information, or with respect to any other matter, shall be conclusive and binding upon the Owner or other party who submitted the plans or other information for approval. The Architectural Committee shall approve all proposed Improvements that comply with the applicable Design Guidelines and this Declaration. All Improvements shall be constructed in accordance with the plans approved by the Architectural Committee.

4.3 Landscaping Requirements. The Architectural Committee shall require as a condition to approving any proposed plans submitted to the Architectural Committee pursuant to Section 4.4 that such plans provide for landscaping of at least thirty percent (30%) of the surface area of the Lot which is the subject of such plans.

The Architectural Committee shall have the right to modify or supplement the Design Guidelines from time to time in a manner consistent with this Declaration and the overall development of the Property; provided, however, that no modification to the Design Guidelines may result in a provision that contradicts or conflicts with any express provision of this Declaration or is contrary to the general intent or purposes of this Declaration; and provided further, that once plans for an Improvement have been approved, subsequent changes in the Design Guidelines shall not affect such prior approval.

- (c) Landscaping Design:
 - (1) Plant materials;
 - (2) Design principles; and
 - (3) Maintenance guidelines.
- (d) Storm Drainage:
 - (1) Master Plan; and
 - (2) Parcel Drainage.

4.5 Change in Plans. No material change in any plans or other document required to be approved by the Architectural Committee shall be made unless and until the proposed change is submitted to and approved by the Architectural Committee.

4.6 Submittal and Approval Procedures. An Owner or the Owner's representative shall submit materials as required by the Design Guidelines in connection with the consideration of any plans, submittals or applications for approval of Improvements and shall pay such reasonable architectural review fees as may be established from time to time by the Architectural Committee in the design Guidelines or otherwise. The Architectural Committee's approval or disapproval of submitted plans shall be within the reasonable discretion of the Architectural Committee, but shall be based upon compliance with this Declaration, the factors set forth in the Design Guidelines and the harmony and compatibility of the submitted plans with other Improvements existing or contemplated within the Property. The Architectural Committee shall not arbitrarily withhold any approval. The Architectural Committee's approval of plans shall be evidenced only by the signature of the Architectural Committee upon the plans so approved or by other written instruments signed by the Architectural Committee. The Architectural Committee may approve or disapprove any submittal, or grant approval subject to specified conditions. The Architectural Committee shall, within the time periods provided for in the Design Guidelines, deliver written notice to the party seeking the approval stating that the approval is granted; that approval is granted subject to conditions and specifying the conditions, which must be consistent with this Declaration and the Design Guidelines; or that approval is denied and specifying the reasons for disapproval. Upon disapproval, the party seeking approval may then modify and resubmit the necessary documents for approval. If the Architectural Committee fails either to approve or disapprove submitted documents, whether an initial submittal or resubmittal, within the time periods provided by the Design Guidelines, the Architectural Committee shall be conclusively deemed to have approved such documents; provided, however, that the lack of express approval shall not waive any express requirement of this Declaration or the Design Guidelines.

4.7 Construction of Improvements. Upon receipt of approval of plans from the Architectural Committee, the Owner to whom approval is given shall, as soon as reasonably practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of construction or alteration of all approved Improvements. Unless the work is commenced within six (6) months from the date of such approval, or the Owner applies for and obtains an extension of such time period from the Architectural Committee prior to the expiration of such time period, such approval shall automatically be revoked. For purposes of this Declaration, construction shall be deemed to have commenced on a Building if a building permit has been obtained and a foundation has been poured for the Building. For any other Improvement, construction shall be deemed to have commenced if required building permits have been obtained and any visible work on the Improvements in question has been started. Except to the extent that non-material modifications are made to such plans, all Improvements shall conform to the plans for such Improvements previously approved by the Architectural Committee. After commencement of construction of any Improvement, the Owner shall

diligently pursue the work thereon until completion, subject to reasonable delays for weather, fire, flood, strikes, acts of God and other causes beyond the Owner's control.

4.8 Installation of Landscaping. All landscaping for a Parcel shall be installed, according to the approved plans, as soon as reasonably practicable following substantial completion of the primary Building on the Parcel, and in all events within not more than six (6) months following such substantial completion.

4.9 No Engineering Approval. Plans are not approved for engineering design, and by approving such plans neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans.

4.10 Waiver or Variance of Restrictions. To encourage good design, innovation and flexibility, the Architectural Committee may waive or grant a variance of any of the requirements or restrictions contained in the Design Guidelines, in this Article with respect to any Parcel, if, in the sole judgment of the Architectural Committee, such waiver or variance would be consistent with the general intent and purposes of this Declaration and would not adversely affect any other Parcel or the Property as a whole. Subject always to the provisions of the foregoing sentence, variances may be approved, among other reasons, to correct errors in surveying of lot lines or unintentional mis-location of improvements on a Parcel, or where the application of any of the provisions of this Declaration or the Design Guidelines to a particular Parcel or any portion thereof would, by reason of unusual circumstances or surroundings, result in undue hardship. Any Owner desiring a waiver or variance shall submit a written request to the Architectural Committee and shall provide all other information and material requested by the Architectural Committee. A waiver or variance may be granted only with the consent of the Architectural Committee and must be evidenced by a written instrument signed by the Architectural Committee. If the Architectural Committee fails to approve or disapprove in writing any request for a waiver or variance within thirty (30) days after receiving all requested information relating to the waiver or variance, the requested waiver or variances shall be deemed denied.

4.11 Barriers Restricted. Except as shall be specifically approved by the Architectural Committee, no Owner shall permit to be constructed or erected within such Owner's Parcel or on the perimeter of such Owner's Parcel, any fence, wall or barricade, whether of a temporary or permanent nature, which materially limits or impairs the free access of motor vehicles and pedestrians between Parcels. Notwithstanding the foregoing, temporary barriers may be erected during periods of repair or construction, or during periods where any improvement may be unsafe or unusable due to damage or destruction, as such may be reasonably necessary.

**ARTICLE 5
DUTIES AND POWERS OF THE ASSOCIATION**

5.1 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) enforce the provisions of this Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, and the commencement of actions;
- (b) acquire, maintain and otherwise manage all of the Common Facilities and all facilities, improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain;
- (c) pay any real and personal property taxes and other charges assessed against the Common Facilities unless the same are separately assessed to the Owners;
- (d) obtain, for the benefit of the Common Facilities, all water, gas and electric, refuse collections and other services;
- (e) grant easements where necessary for utilities and sewer facilities over the Common Facilities to serve the Property;
- (f) contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;
- (g) delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the maintenance and management of projects that are similar to the Project to perform all or any part of the duties and responsibilities of the Association;
- (h) establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- (i) subject to the rights of the Declarant, have the duty to maintain architectural control over the property and appoint the Architectural Committee in connection therewith, pursuant to Article 4 hereof;
- (j) have the power of entry upon any Parcel where necessary in connection with construction, maintenance or repair for the benefit of the Common Facilities, or the Owners;

(k) at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Parcels;

(l) acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Facilities, the administration of the affairs of the Association or for the benefit of the Members;

(m) at its sole discretion, contract for cable television service for the benefit of the Owners who have subscribed for the service; and

(n) have the power to establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration, all or any portion of the Common Facilities to said district.

5.2 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws, provided, however, no such delegation, whether to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE 6 REPAIR AND MAINTENANCE

6.1 Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Parcels, Common Facilities or other land within and about the Project in such manner and at such times as the Board shall prescribe:

(a) maintain the Common Facilities in a clean, safe, attractive, and first-class condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, attractive, and first-class condition at all times;

(b) repair, restore, replace and make necessary improvements to the Common Facilities;

(c) maintain all drainage facilities and easements which constitute Common Facilities in accordance with the requirements of any applicable flood control district;

(d) cause the appropriate public utility to maintain any utility easements located within the Common Facilities;

(e) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote of Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

6.2 Repair and Maintenance by Owner. Every Owner shall:

(a) maintain such Owner's Parcel and all Improvements located therein in a clean, safe, attractive and first-class condition at all times; and

(b) repair any structural or visible defects or damages to Improvements, keep the exterior of Buildings and other structures on such Owner's Parcel in good clean, safe, attractive, and first-class condition and painted as required, keep such Owner's Parcel free from weeds, trash and debris, and keep all signs and lighting clean and functional.

6.3 Standards for Maintenance and Construction.

(a) Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines and, if required by the Design Guidelines, only after approval of the Architectural Committee; and

(b) Throughout the period of construction upon a Parcel, the Owner of such Parcel shall keep the Parcel and all streets used by construction equipment or trucks in clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Parcel and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Parcels.

6.4 Right of Association to Maintain and Install. In the event any Owner fails to maintain the exterior of such Owner's Building or Parcel or the Improvements thereon, or to install and thereafter maintain landscaping on such Parcel in accordance with Section 4.8 hereof, the Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its power under this Section 6.4(a) to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any such committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

(e) In the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(1) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished.

(2) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(3) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(4) Unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Reimbursement Assessment to the affected Owner and Parcel.

ARTICLE 7 USE RESTRICTIONS

7.1 General Use Restrictions. Subject to the provisions of this Article 7, Parcels within the Property shall only be used for those uses and categories of uses, from time to time permitted within the Area Plan approved by the City with respect to the Property.

7.2 Uses Specifically Prohibited. Notwithstanding anything to the contrary in Section 7.1, the enumerated uses specified above shall not be construed to include, either as a main or accessory use, and no Parcel or part thereof shall be used for, any of the following uses: (a) Terminals, including truck or bus terminals, and other distribution facilities; (b) Food processing operations, except as incidental to permitted restaurant and cafeteria operations; (c) Sand, gravel, and other extraction mining; (d) Manufacturing and assembly operations, except as otherwise specifically provided in this Declaration; (e) Distillation, refining, smelting, agriculture or mining operations; (f) Churches, synagogues, mosques or other places of worship; (g) Dry cleaning or laundry plants or facilities other than facilities used solely for the collection of soiled clothing and other fabrics from customers and distribution of clean clothing and other fabrics to customers; (h) Industrial or manufacturing uses; (i) Junk or salvage yards; (j) Cabinet and carpenter shops; (k) Plumbing or sheet metal shops; (l) Automobile body and fender repair work; (m) Establishments (including, without limitation, bookstores) engaged in the business of selling, exhibiting or delivering pornographic or obscene materials (except to the extent that such materials are commonly sold by quality bookstores such as B. Dalton, Barnes & Noble, Brentano's and Waldenbooks).

7.3 Generally Prohibited Uses. Notwithstanding any other provisions of this Declaration, no use or activity shall be established, maintained, conducted or permitted on any portion of the Property which will cause or result in any: (a) emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside the boundaries of the Parcel where created (except to the extent that such fumes or odors are incidental to the normal operation of an upscale restaurant) or which may be detrimental to the health, safety, welfare or comfort of any Owner of any other person, to the condition of any other portion of the Property, or to any vegetation within the Property; (b) discharge of fluids, gases, solid wastes or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property; (c) discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Parcel upon which the operation is being conducted; (d) recurrent or continuous emission of sound or noise from any Parcel which may be heard without instruments outside the boundaries of the Parcel of origination; (e) recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Parcel of origination; (f) physical hazard by reason of fire, radiation, explosion or other similar cause to either the Property or the surrounding area; (g) persisting unsightly condition on any Parcel which is visible from any street or any other portion of the Property; (h) excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Parcels; or (i) violation of any applicable statute, ordinance, rule, regulation, permit or other validly imposed requirement of any governmental body.

7.4 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained

within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Parcel and the Property. Incineration of trash, garbage or waste materials on the Property is prohibited.

7.5 Hazardous Materials.

(a) Restricion on Hazardous Materials. Any Hazardous Material brought upon, kept, used, generated, stored, treated, disposed of or released in or about the any Parcel, or soils or groundwater of same, by any Owner of such Parcel, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition". In the event any Hazardous Condition occurs on a Parcel, the Owner of such Parcel shall promptly take all actions at its sole expense as are necessary to correct said violation to the satisfaction of the regulating entity.

(b) Indemnity: If an Owner of a Parcel breaches the obligations stated in Section 7.5(a) above or if a Hazardous Condition exists at any time, then the Owner of such Parcel shall indemnify, defend and hold the Association, the Owners of each other Parcel within the Property and the members, partners, officers, directors, shareholders, employees, and agents of the Association and such other Members harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this Article 7.5 shall survive the termination of this Declaration.

7.6 Storm Drainage. All storm drainage facilities on each Parcel shall conform to the requirements of the master storm drainage system which Declarant has developed for the Property and to all applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction. Each Owner shall maintain, repair, replace and keep free of debris and obstruction all drainage systems and facilities located on such Owner's Parcel. All parking, driveways and loading areas shall be paved and properly graded to assure proper drainage. The Architectural Committee may require, as part of the drainage plan for any Parcel, that parking lots or other areas on a Parcel be designed to provide storm water retention as provided in the Design Guidelines and the applicable laws, ordinances and regulations of all governmental agencies and authorities having jurisdiction.

7.7 Excavation. No excavation shall be made except in connection with the construction of an Improvement, and upon completion thereof any exposed openings shall be backfilled and disturbed ground shall be graded, leveled and landscaped.

7.8 Solar Devices. Solar collectors and other solar energy devices are permitted. All exterior solar energy devices, including, but not limited to, solar panels, collectors and accessories, must be architecturally integrated into the building design, or, if free-standing, must be visually screened from both adjoining Parcels and all streets by landscaping or other means acceptable to the Architectural Committee.

7.9 Utility Lines Underground. All utility lines, pipes and conduits within the Property shall be installed underground and no such utility lines, pipes or conduits or supporting apparatus shall be permitted above ground, except to the extent reasonably necessary to support such underground utilities.

7.10 Zoning Variances. No Owner of any Parcel within the Property shall seek or obtain a zoning variance or a conditional use permit with regard to such Owner's Parcel without the prior written approval of the Architectural Committee, nor shall any Owner request either a rezoning of any portion of the Property or an amendment to the Area Plan approved by the City with respect to the Property without the prior written approval of the Architectural Committee.

7.11 Planning Documents. No subdivision plat or replat of all or any portion of the Property may be submitted to any governmental authorities or recorded unless such plat or replat has first been approved in writing by the Architectural Committee. No request for rezoning and no preliminary or final project plan (as those terms are defined in the City's Zoning Ordinance) may be submitted to any governmental authorities for approval without the prior written approval of the Architectural Committee.

7.12 Project Signs. The Project Signs shall be located only within the "Sign Easements" described in Section 10.4. The initial design of the Project Signs shall be determined in the sole discretion of Declarant. Declarant and/or the users of such Project Signs shall be responsible for payment of costs and expenses incurred in the construction and installation of any Project Signs which Declarant elects to install. The Association shall be responsible to maintain any Project Signs installed and Improvements related to such Project Signs and any and all costs and expenses which shall be incurred in the operation, servicing, replacement and maintenance of the Project Signs (and any related Improvement) shall be borne equally by the Parcels using the particular sign. Such expenses ("Sign Expenses") shall be deemed a "Reimbursement Assessment" as described in Section 8.6.

ARTICLE 8 ASSESSMENTS

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8.1 Payment of Assessment. Each Owner by acceptance of a deed to any Parcel, whether or not it shall be so expressed in such deed or other conveyance shall be deemed to and does hereby covenant and agree to pay to the Association any and all Assessments levied against its Parcel as in accordance of the provisions of this Declaration. Declarant shall have the duty to pay any and all Assessments which shall be levied against any Parcel owned by Declarant. The Assessments, together with interest thereon which shall accrue at the Interest Rate or Default Rate, as set forth herein, late charges and costs of collection thereof, including court costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Parcel against which such Assessments are made from the date on which such Assessments are due. Assessments shall commence upon the date of the recording of this Declaration. An Owner who has leased his Parcel may pass Assessments on to his tenant pursuant to the lease terms. However, the Owner shall be and remain liable to pay such Assessments as herein provided.

8.2 Apportionment. The amount of each Assessment, whether a General Assessment or Supplemental Assessment, to be paid by an Owner shall be computed by apportioning the total of such Assessment among and to all Owners in accordance with their respective "Owner's Percentages." An Owner's Percentage may vary during a calendar year if the Total Building Footage shall change during such year and any computations related to determination of the amount of an Assessment required to be paid by and Owner shall recognize any change in the Total Building Footage during the applicable time period. Each Owner's Percentage shall be obtained by dividing the Building Footage which shall exist on said Owner's Parcel, by the Total Building Footage which shall exist within the total Project on the same date. The amount obtained by multiplying the total amount of the applicable Assessment by the Owner's Percentage shall be the amount of the applicable Assessment which such Owner shall be required to pay.

8.3 Annual Budget. General Assessments shall be determined on the basis of a calendar year beginning January 1, and ending December 31, next following; provided, however, that the first such year shall begin on the date that this Declaration is recorded and shall end December 31, 1999. On or before November 1, of each year, the Association shall prepare and furnish to each Owner or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year the "Annual Budget." The Annual Budget, including a reasonable reserve, shall itemize for the applicable year, the estimated Common Expenses, as defined in Section 1.11, anticipated receipts, if any, and any estimated deficits or surpluses from the prior operating period. The Annual Budget shall serve notice of and as the supporting document for the General Assessment for the upcoming fiscal year and as a guideline under which the Project shall be operated during such annual period.

8.4 General Assessment. All Common Expenses shall be paid through an annual general assessment to all Owners. Each Owner's share of the total Common Expenses, as estimated by the Annual Budget, shall be a "General Assessment." Each respective share of a General Assessment shall be based upon the Annual Budget determined in accordance with Section 8.3. At the end of each calendar year, the Association shall determine the exact amount

of the Common Expenses which were incurred during such calendar year, and shall charge or credit each Owner in the next assessment period for the difference between the actual Common Expenses incurred for the prior assessment period and the estimated Common Expenses upon which said General Assessment was based. Within ninety (90) days of the close of each calendar year, each Owner shall be provided a copy of the operating statement shall provide reasonable detail of the actual income and expenses of the Association for the applicable year.

(a) Notice. The General Assessment for each calendar year shall be due and payable on January 1, of such year. Any Owner may direct the General Assessment to its tenant(s) for payment subject to the tenant leases. Failure of the Association to give timely notice of any General Assessment by delivery of the Annual Budget, as provided herein, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Owner from the obligation to pay such General Assessment or any other Assessment; provided, however, the date on which payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such General Assessment shall have been given to the Owners in the manner provided in this Declaration.

(b) Payment. Any Owner which shall not have paid its annual General Assessment in full on or before January 1 of each year, or the date upon which same shall be due in accordance with Section 8.4(a), shall be deemed to have elected to pay such General Assessment in twelve (12) equal monthly installments. Any General Assessment which shall not be paid on or before January 1 of the applicable year shall accrue interest at the Interest Rate on the unpaid balance thereof from the original date due until paid. The Owner may direct the General Assessment to its tenant(s) for payment, but only in accord with its tenant leases. The Association may, but shall not be required to send out monthly statements to an Owner and each such installment shall be due and payable on the first day of each month without notice or demand. Any monthly installment of any General Assessments which shall not have been received by the Association on or before the fifth day of any month in which it is due shall be assessed a late charge in an amount to be determined from time to time by the Association, but which shall not be in an amount in excess of five percent (5%) (or the maximum rate permitted by applicable law, whichever is lower) the amount of the unpaid installment. In the event that a monthly installment of a General Assessment which is being paid monthly as permitted in accordance with the provisions of this section is not paid when due, then so long as the monthly payment or payments shall remain delinquent, the unpaid balance of such General Assessment shall accrue interest at the Default Rate. Late charges and interest on any unpaid monthly installments of any General Assessments may be charged according to procedures established by the Association, whether or not monthly statements shall be sent. The Association shall have the right to establish a fee for costs and expenses incurred in maintaining records of the installment payments of General Assessments, which fee shall be charged only to Owners who pay such General Assessments on an installment basis.

8.5 Supplemental Assessments. In addition to the General Assessment, the Association may levy, in any year, one or more Supplemental Assessments applicable to that

year only for the purpose of paying, in whole or in part, (i) the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Facilities, (ii) deficits created by non-payment of any Assessments by any Owner, and (iii) other costs and expenses required to be paid by the Owners in accordance with the provisions of this Declaration, including any charges necessitated by change or under-estimation of the budget and unanticipated costs incurred. At the time of the adoption of such Supplemental Assessment, the Association shall designate the time and the manner in which such Supplemental Assessment is to be paid by each Owner; provided, however, that the due date for payment of a Supplemental Assessment shall be at least thirty (30) days from the date that notice of the Association's approval of the Supplemental Assessment shall be given by the Association. Such Supplemental Assessment shall be apportioned to each Owner in the manner set forth in Section 8.2. Any Supplemental Assessment which shall not be paid on or before the applicable due date shall accrue interest at the Default Rate on the unpaid balance thereof from the original date due until paid.

8.6 Reimbursement Assessment. The Association may, subject to the provisions hereof, levy an Assessment for Sign Expenses pursuant to Section 7.12 and also an Assessment against any Owner if the willful or negligent failure of an Owner to comply with this Declaration or the Rules and Regulations have resulted in the expenditure of funds by the Association to cause such compliance. Such assessment shall be known as a Reimbursement Assessment and shall be levied only after notice provided in Section 8.8. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Owner of the decision of the Association that the Reimbursement Assessment is owing. Interest shall accrue on any Reimbursement Assessment at the Default Rate from the date of expenditure of funds by the Association until such amount shall be repaid.

8.7 Collections of Assessments. The Association shall, in its sole discretion, establish such procedures for the collection of Assessments, including provisions for late charges, interest on unpaid Assessments, and such other matters as the Association shall determine, and shall have any and all rights and remedies provided at law or in equity for the collection of debts, subject only to the requirement of notice and hearing provided in Section 8.8.

8.8 Notice of Unpaid Assessments. If any Assessment or any installment thereof is not paid within ten (10) days after its due date, the Association may mail a notice of default to the applicable Owner. Such notice shall specify (a) that the applicable Assessment or installment thereof is late, (b) the action required to cure such default, including the specific amount required to be paid, including late charges, interest and costs of collection, if any, (c) a date not less than five (5) days from the date the notice is mailed by which such default must be cured, and (d) that a failure to cure the default on or before the date specified in the notice may result in the acceleration of the balance of the Assessment for the current year and the filing and foreclosure of a lien for the Assessment. If the default in the payment of the Assessment is not cured as specified in the notice, the Association, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further notice or demand to the Owner

and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration.

8.9 Remedies to Enforce Assessments. Each Assessment, together with accrued interest, late charges or other similar charges, levied shall be a separate, distinct and personal debt and obligation of the Owner against whom such Assessment is assessed. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association against such Owner without foreclosing or waiving the lien securing the same. Any and all rights and remedies shall be exercised in such manner, on one or more occasions and in such order as the Association shall elect, without waiver of any other right or remedy or lien provided in this Declaration or by law. Any failure of the Association to exercise any such right on one or more occasions shall not constitute a waiver of the right to so exercise such right in the future. In addition to the amount of the unpaid Assessment, an Owner shall be required to pay any and all costs and expenses which may be incurred by the Association in collection of such Assessment, including reasonable attorneys' fees and costs, whether or not litigation is commenced.

8.10 Lien for Assessments. All sums assessed to an Owner of any Parcel in the Project pursuant to the provisions of this Declaration, together with interest thereon at the Interest Rate or Default Rate, as applicable, late charges and costs of collection, shall be secured by a continuing lien on such Parcel in favor of the Association. The Association may record a notice of lien amount for sums assessed pursuant to this Declaration. If it elects to do so, the Association shall cause to be prepared a written notice of lien setting forth (i) the name of the Owner of the applicable Parcel, (ii) the legal description of the Parcel, (iii) the amount of the Assessment, (iv) the date such Assessment was due and (v) the amount remaining unpaid. Such notice of lien shall be signed and acknowledged by the Association, and shall be recorded in the office of the County Recorder of Iron County, State of Utah. No notice of lien shall be recorded until there is a delinquency in the payment of the Assessment and after the notice required to be given pursuant to Section 8.8. Such lien may be enforced by the sale or foreclosure of the Parcel encumbered by the lien at a foreclosure sale conducted by the Association or its attorney in accordance with the provisions of Utah law applicable to the foreclosure of a mortgage or trust deed or in any manner permitted by Utah law, including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Annotated, as amended from time to time. In a foreclosure conducted under the trust deed statute, the Association may appoint any licensed attorney or title company as trustee. In any such sale or foreclosure, the Owner 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 the lien herein provided whether or not the same shall be specifically set forth therein. The Owner shall also be required to pay to the Association any Assessments against the Parcel which shall become due during the period of foreclosure or sale, and all such Assessments shall be secured by the lien herein provided. The Association shall have the right and power to bid in any foreclosure or sale and, upon purchase thereof, to hold, lease, mortgage or convey the subject Parcel. In the event a proceeding for the foreclosure of the lien granted hereby shall be

commenced, while such proceeding shall be in process, the Association shall be entitled to the appointment of a receiver to collect the rentals being derived from said Parcel.

8.11 Priority of Lien: Liability of Owner. This lien shall have priority over all other interests in the Parcel except liens for real property taxes and mortgages in certain circumstances. The priority of lien for Assessments provided for herein over a Mortgage shall be governed by the provisions of Section 12.3. No foreclosure of a lien shall extinguish the personal liability of the Owner therefor unless the Association shall either (i) actually purchase the Parcel at the foreclosure sale conducted to foreclose such lien, or (ii) actually receive payment in full of amounts due. An Owner's personal liability for payment of Assessments shall be reduced by the amount actually paid at the foreclosure by the successful bidder which shall remain after allocation for payment of costs and expenses incurred by reason of such sale. No other sale or transfer shall relieve such Owner from liability for any Assessments which shall be due as of the date of foreclosure.

8.12 Certificate of Assessment. The Association shall, upon written request, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the Assessments on a specific Parcel have been paid and said certificate may be conclusively relied upon by the party requesting same.

8.13 No Avoidance. No Owner may avoid or diminish such Owner's obligation to pay Assessments, the right of the Association to assert a lien against said Owner's Parcel to enforce payment of same or be relieved of such Owner's personal obligation for the payment of Assessments by reason of (i) a waiver of the use or enjoyment or the actual non-use of any of the Common Facilities, (ii) a waiver of any services provided for in this Declaration, or (iii) all or any part of said Owner's parcel being unoccupied for all or any portion of the period for which such Assessments shall have been made.

8.14 Accrual of Interest. Interest shall accrue on amounts required to be paid in accordance with the provisions of this Declaration from the date such payment is due until the required amount is received by the Association. The term "Interest Rate" when used in this Declaration shall refer to a per annum rate of interest which shall be two percent (2%) per annum above the "Reference Rate." The term "Default Rate" when used in this Declaration shall refer to a per annum rate of interest which shall be six percent (6%) per annum above the Reference Rate. The Interest Rate and the Default Rate shall be adjusted at the same time and in the same manner as there shall occur any change in the Reference Rate. The Reference Rate is the rate of interest published in the Wall Street Journal, from time to time, as the "Prime Rate." The Reference Rate shall be deemed also to refer to any subsequent reference point, however denominated, that may in the future be adopted by the Bank as the replacement for the Reference Rate which is currently being used by the Bank as its reference point. All calculations of interest hereunder shall be made as follows: (a) the Interest Rate or the Default Rate, as applicable, shall be multiplied by the amount due, (b) the product determined in clause (a) above shall be divided by three hundred

sixty-five (365); and (c) the quotient obtained in clause (b) above shall be multiplied by the actual number of days in the period for which the calculation is being made.

8.15 No Offset. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Association or any officer, employee, agent or representative thereof is not properly exercising its duties and powers under this Declaration.

8.16 Accounts. Assessments collected from Owners shall be deposited in two (2) separate and distinct bank accounts which shall be created and maintained for said Assessments and one such account shall be designated for operating expenses and one (1) such account shall be designated for capital reserves whether such account shall be referred to as reserves, surplus or sinking funds. Capital reserves shall be utilized solely for the cost of repair, replacement and refurbishment (excluding routine annual maintenance) of real and personal property which must be renovated, replaced and refurbished on a periodic basis. Under no circumstances shall the Association utilize or borrow funds from the segregated capital reserves bank account for ordinary operating expenses.

ARTICLE 9 RIGHTS TO COMMON FACILITIES

9.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Facilities, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Parcel, subject to the following provisions:

(a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Facilities.

(b) The right of the Association to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members.

(c) The right of the Association to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsection 9.1(b) above, all or any portion of the Common Facilities to said district.

9.2 Waiver of Use. No Member may exempt such Member from personal liability for Assessments duly levied by the Association, nor release the Parcel owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Common Facilities, or the abandonment of such Member's Parcel.

ARTICLE 10 EASEMENTS

10.1 Owners' Rights and Duties: Utilities and Cable Television. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(a) Whenever sanitary sewer, water, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Parcel served by said lines or facilities a nonexclusive easement to the full extent necessary therefor, to enter upon the Parcels owned by others, or to have utility companies enter upon the Parcels owned by others, in or upon which said lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Parcel caused by such entry as promptly as possible after completion of work thereon.

(b) Whenever sanitary sewer, water, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Parcel, the Owner of each Parcel served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Parcel.

(c) The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

10.2 Utilities. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

10.3 Common Area Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner, and the Occupants and Permittees of each Owner:

(a) Nonexclusive easements over, upon, across and between each Parcel for the purpose of pedestrian traffic between each Parcel and (1) each other Parcel which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (3) the Common Facilities; (4) the parking areas now and hereafter located on each Parcel; and (5) over and across the Common Areas located on each Parcel; limited, however, to those portions of each Parcel which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

(b) Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Parcel and (1) the public streets and alleys now and hereafter abutting any portion of the Property; and (2) the Common Facilities; limited, however, to those portions of the Property which are improved by the Owner thereof from time to time for vehicular accessways as such portions may be relocated from time to time by such Owner.

(c) Nonexclusive easements over, upon, across and between the access points and driving lanes from time to time established on each Parcel for the purpose of providing ingress, egress, and access to (1) the easements hereby created; (2) the public streets and alleys now and hereafter abutting any portion of the Property; and (3) the Common Facilities.

(d) Nonexclusive easements in and to the parking areas from time to time located on each Parcel for access to and use for vehicular parking purposes.

10.4 Sign Easements. There is hereby granted to Declarant and the Association one (1) or more easements (the "Sign Easements") to construct, install, service, replace and maintain Project Signs. The Sign Easement shall be located upon the Common Facilities at a location designated in any final subdivision plat recorded with regard to the Property, at a location designated by the Declarant at the time of the conveyance of the Common Facilities to the Association, or on any Parcel at a location reserved for the benefit of the Association at the time of the conveyance of the Parcel by Declarant. The Sign Easements herein granted shall include an easement over and across the surface of the Property from the public right of way or Project driveway to the location of the Project Sign as shall be reasonably necessary for the construction, installation, servicing, replacement and maintenance of the Project Sign. The Sign Easement shall be utilized in the manner that shall be reasonably determined to not unduly interfere with the use of those portions of the Property upon which such Easement is situated. Responsibility for the maintenance of the Project Signs is specifically set forth in Section 7.12.

10.5 Access to Perform Duties. There is hereby granted unto the Association an Easement, together with the right to grant and transfer such Easement to others as is reasonably required to accomplish the intended purpose of such Easement, over and through all portions of

the Project for the purpose of permitting the Association to exercise its rights and discharge its obligations and duties under this Declaration. Such right of access shall be specifically granted to security personnel employed by or under contract with the Association, all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties.

10.6 Extension of Easement. Each Parcel, whether now existing or whether in the future existing, as defined in accordance with the provisions of this Declaration, shall have appurtenant thereto, and shall be benefitted and burdened by, as applicable, the Easements herein granted. Each Owner shall be entitled to the benefit of the Easements herein granted and shall be entitled to permit each Occupant, together with any agent, contractor, licensee, employee and any business customer, invite and guest of said Owner and/or Occupant ("Other Users"), the non-exclusive right to enjoy the benefits of the Easements herein granted, but said Owner's and Other User's use and enjoyment of its Parcel shall be subject to and burdened by the Easements also herein granted.

10.7 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the Easements, each Owner may be entitled to take whatever steps it deems necessary to protect and preserve the private ownership of its Parcel and to prevent same from being dedicated to the public use as a matter of law, provided, however, that such steps shall be taken in such manner and at such time as shall cause minimal disruption of the occupant and usage of said Owner's Parcel. An Easement granted herein to the City shall be deemed granted to the City only, which may be used by its employees, agents, contractors and representatives in performance of their respective duties within the Project, and shall not be construed to be a grant to the public generally.

ARTICLE II NATURE OF EASEMENTS AND RIGHTS GRANTED

11.1 Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominate estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

11.2 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) Are made for the direct, mutual and reciprocal benefit of the Owners, Occupants and Permittees of the respective Parcels;
- (b) Create mutual equitable servitudes upon each Parcel in favor of the other Parcels;
- (c) Constitute covenants running with the land; and
- (d) Shall bind every person or entity having any fee, leasehold or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

ARTICLE 12 MORTGAGEE PROTECTION

12.1 Mortgagee Protection. No breach of any of the covenants, conditions, restrictions, or limitations contained in this Declaration shall defeat or render invalid the lien of any first Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure.

12.2 Notice of Noncompliance to Mortgagee. From and after the time a Mortgagee makes written request to the Association therefore, the Association shall send to the Mortgagee a copy of any notice of default sent to an Owner or lessee, if a leasehold mortgage.

12.3 Priority of Assessment Lien. The lien or claim against a Parcel for unpaid Assessments levied by the Association pursuant to this Declaration shall be subordinate to a first Mortgage given in good faith and for value affecting such Parcel which has been recorded prior to the date such Assessment became due. A Mortgagee who comes into possession of the Parcel pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or delivery of a deed or assignment in lieu of foreclosure, except that such Mortgagee shall be responsible for the payment of a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Parcels including the Parcel in which the Mortgagee is interested. No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not being a burden to a Mortgagee coming into possession pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced against a Mortgagee, a successor in title to a Mortgagee or the Parcel affected or previously affected by the Mortgage concerned (to the extent any such

collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Parcel).

12.4 Financial Information. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association during reasonably business hours. From and after the time a Mortgagee makes written request to the Association therefrom, and at the expense of such Mortgagee, the Association shall furnish to such Mortgagee copies of such financial reports or writings summarizing or reflecting the financial position or history of the Common Area maintenance for the Project as may be prepared for distribution to or use by the Owners generally.

12.5 Article Supersedes Others. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 12, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the right, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

12.6 Amendment to Article. No amendment to this Article 12 which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the first Mortgagees of the individual Parcels have given their prior written approval to such amendments. Any amendment to this Article 12 shall be accomplished by an instrument executed by the Association and filed for record in the office of the County Recorder of Iron County, State of Utah. In any such instrument, an officer of the Association shall certify under penalties of perjury that the prior written approval of first Mortgagees required by this Article 12 as a condition to amendment has been obtained.

12.7 Notice to Mortgagee. Any notice to a Mortgagee under this Article 12 shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class mail, postage prepaid, and addressed to the Mortgagee at the address for notices from time to time specified by the Mortgagee in writing to the Association.

ARTICLE 13 EXPANSION RIGHTS

The Expansion Property described in Exhibit "B" may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article 13, as follows:

13.1 Annexation Without Approval and Pursuant to General Plan. All or any part of the Expansion Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, consent or vote of the Association or its Members or any other persons or parties, provided that a Supplementary Declaration covering the portion of said Expansion Property sought to be annexed, shall, if owned by Declarant, be executed and recorded by Declarant, or, if not owned by Declarant, shall be executed by the then

Owner or Owners thereof, consented to by Declarant, and recorded; provided, however, no Supplementary Declaration shall be so executed and recorded pursuant to this Section 13.1 subsequent to December 31, 2015. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Property and all of the Owners of Lots in said annexed real property shall automatically be Members of the Association.

13.2 Supplementary Declarations. The annexations authorized under the Section 13.1 shall be made by filing of record a Supplementary Declaration of Protective Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property. Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Notices. Upon acquisition of title to a parcel, each Owner shall provide written notice to the Manger of such Owner's address for purposes of furnishing notices in connection with this Declaration. Owner may request that such notice be sent to its tenant should the parcel be subject to a ground lease. The Association shall maintain a record of the notice addresses furnished by the Owners. The address provided by an Owner shall be used for any notice required to be given under this Declaration and if no such address shall have been provided, then the address used by Iron County for the mailing of real property tax statements for such parcel shall be used for such notice. All notices to be given pursuant to this Declaration shall be sufficient if given by personal service, by guaranteed overnight delivery service or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the prescribed address. Any time period provided in the giving of any notice hereunder shall commence upon the delivery service or two (2) days after mailing certified or registered mail. Notice of the regular annual meeting of the Members shall be sent as set forth in the Bylaws.

14.2 Amendment. Except where otherwise specifically provided in this Declaration, this Declaration may only be amended upon the affirmative vote of Members holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members. Any such amendment shall recite that a vote of the Owners has been properly taken and that the amendment has been approved in accordance with the provisions hereof, shall be certified by an officer of the Association and shall be recorded in the office of the Iron County Recorder, State

of Utah. Any such amendment shall take effect upon such recordation. Each Owner makes, constitutes and appoints the Association the true and lawful attorney-in-fact of said Owner to act in said Owner's name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Declaration as may be required by law or by vote taken pursuant to the provisions of this Declaration. Any amendment to this Declaration which shall require the express consent of a specified party, shall be accomplished only by an amendment executed by both the Association and the party from whom such consent shall be required which shall be filed for record in the office of the County Recorder of Iron County, State of Utah.

14.3 Amendment by Declarants. Declarant reserves and shall have the sole right to (a) amend this Declaration without the vote or consent of any Owner for the purpose of curing any inconsistency between the provisions contained herein, (b) amend this Declaration without the vote or consent of any Owner in any manner which does not adversely affect the substantive rights of existing Owners or Mortgagees. The foregoing amendments may be made without the joinder or approval of any Owner, Mortgagee or the Association.

14.4 Insurance. The Association shall obtain and maintain such insurance as may be required by law, including workers compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable. Insurance policies and insurance coverage shall be reviewed at least annually by the Association in light of the then existing and reasonably anticipated liabilities of the Project.

(a) Liability Insurance. The Association shall acquire and maintain or cause to be maintained comprehensive public liability insurance providing coverage occurring on or about the Common Areas or Common Facilities and shall, to the extent reasonably obtainable, have limits of not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Part of such coverage may be provided through an umbrella policy. Declarant or any successor to its interest, and other parties reasonably identified by the Association, shall be named as additional insureds with respect to such insurance. Premiums for such insurance shall be a Common Expense.

(b) Property Insurance. The Association shall acquire and maintain or cause to be maintained "all risk" (or special form causes of loss) insurance on all Common Facilities and Project Signs (except foundations, pavement, sidewalks, underground utilities, and other types of improvements which are not generally insured against such risks or causes of loss) in an amount equal to the full replacement value thereof (less a deductible) as reasonably determined by the Association from time to time. Declarant and other parties reasonably identified by the Association shall be named as loss payees. Premiums for such insurance shall be a Common Expense.

(c) Policy Limits. Liability insurance policy limits may be increased from time to time as determined by the Association.

14.5 Casualty. If a building should be damaged by fire or other casualty, the owner of the building shall cause the same to be repaired or rebuilt as soon as reasonably possible. In any event, the repairing or rebuilding must be commenced within ninety (90) days of the casualty and diligently continued until the repairs or rebuilding are complete. If the building is damaged to such an extent that repair or rebuilding cannot be reasonably completed within two hundred seventy (270) days after the day of the casualty, the owner of the building shall cause the building to be demolished and unless the owner has plans to immediately commence construction of a new building, the owner shall plant grass and other landscaping (including an automatic sprinkler system) which is compatible with the balance of the Project. The landscaping plans to be approved by the Association, which approval shall not be unreasonably withheld.

14.6 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and Project for a term of fifty (50) 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 at the end of any such period by the affirmative vote of three-fourths (3/4) of the Owners. No such termination shall terminate any Easement granted herein and all such Easements shall survive any termination of this Declaration and may be extinguished only in the manner provided by law for the termination of an Easement. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Michael Leavitt, Governor of the State of Utah.

14.7 No Merger. The easements, covenants and restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that any of the Parcels may be owned by the same persons from time to time. It is the express intent of the Declarant to create a common scheme for the development and operation of the Project which will not be terminated by the doctrine of merger or otherwise unless this Declaration is terminated in accordance with the provisions hereof.

14.8 Assignment of Declarant's Rights and Remedies. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarants to any person, corporation, association or other entity which assumes such assigned duties of Declarant hereunder. In the event that Declarant attempts to assign less than all of the rights, powers and reservations of Declarant set forth herein, then any such assignment must specify which rights, powers and reservations are being assigned and the only party that shall be permitted to exercise a right reserved or granted unto Declarant shall be the party to whom such right has been assigned. To be effective, such assignment must be in writing, must be recorded in the office of the Iron County Recorder, State of Utah, and must specifically refer to the rights, powers and reservations of Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity (such acceptance may be shown, among other ways, by

execution of such assignment by such assignee, or by such assignee recording the assignment in the office of the Iron County Recorder, State of Utah) and recording of such assignment in the office of the Iron County Recorder, State of Utah, said assignee shall, to the extent of such assignment, assume, and be deemed to have assumed, Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and recording, and to the extent thereof, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property by Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

14.9 Violation Creates Nuisance. Any violation of any provision, covenant, condition or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any party entitled to enforce the provisions of this Declaration.

14.10 Violation of Law. Any material violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any Property or improvements within the Project, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

14.11 No Third Party Beneficiary. This Declaration has been executed and recorded for the benefit of Declarant and the Owners. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefited by a specific provision of this Declaration, no other party shall be construed to be an intended third party beneficiary of any of the rights, duties or obligations set forth herein and no party other than Declarant or an Owner shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

14.12 Words of Conveyance. The use of the word "grant," and any form thereof, as used in provisions of this Declaration to create or preserve easements, licenses or other rights and privileges described herein shall be deemed to be construed in such manner as shall be required to give effect to the easement, license, right or privilege intended to be created or preserved by such provisions and, to the extent necessary to effect such result, any use of the word grant, or any form thereof, shall be deemed to include such other words of conveyance (e.g., such as reserve, quitclaim, convey, transfer, etc.) as may be required to give effect to the easement, license, right or privilege intended to be created or preserved.

14.13 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

14.14 Gender and Number. In this Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

14.15 Captions. The titles, headings and captions used herein are for convenience only and are not a part of this Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

14.16 Invalidity of Provision. If any provision of this Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

14.17 Exhibits. All exhibits to this Declaration are incorporated herein by this reference.

14.18 Governing Law. This Declaration and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah.

EXECUTED to be effective the day same shall be recorded in the office of the Iron County recorder, State of Utah.

DECLARANT:

PROVIDENCE QUANTUM PARTNERS, L.C.,
a Utah limited liability company

By: _____

Its: _____


THOMAS A. PUGH, MANAGER

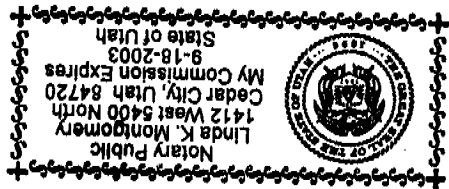
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9-18-03

My Commission Expires:

Linda K. Montgomery
Notary Public
Residing at: *Cedar City, Utah*



The foregoing instrument was acknowledged before me on the 21st day of April, 2000, THOMAS A. PUGH, the Manager of Providence Quantum Partners, L.C.

STATE OF UTAH)
COUNTY OF Iron)
: ss)

EXHIBIT A

PROVIDENCE CENTER OVERALL PROPERTY

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 21, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SLM; THENCE S89°51'05"W, 150.02 FEET ALONG THE SECTION LINE; THENCE N01°09'20"W, 403.91 FEET; THENCE N90°00'00"W, 362.90 FEET; THENCE N02°37'28"W, 1375.45 FEET; THENCE S65°56'25"E, 168.00 FEET; THENCE N22°19'39"E, 40.95 FEET; THENCE N24°06'44"E, 74.00 FEET; THENCE S68°20'15"E, 727.15 FEET; THENCE N21°39'45"E, 472.81 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET, A DISTANCE OF 23.56 FEET; THENCE S68°20'15"E, 89.67 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 56.00 FEET, A DISTANCE OF 26.94 FEET; THENCE N84°13'12"E, 115.33 FEET TO A POINT ON THE WESTERLY R/W LINE OF PROVIDENCE CENTER DRIVE; THENCE ALONG SAID R/W LINE S05°54'04"E, 133.51 FEET; THENCE ALONG SAID R/W LINE & THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 825.00 FEET, A DISTANCE OF 410.57 FEET; THENCE ALONG SAID R/W LINE S22°36'45"W, 473.15 FEET; THENCE ALONG SAID R/W LINE AND THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1155.00 FEET, A DISTANCE OF 132.84 FEET; THENCE S29°12'09"W, 80.03 FEET; THENCE LEAVING SAID R/W LINE N89°46'50"W, 401.49 FEET; THENCE S01°09'20"E, 809.43 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

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ARCHITECTURAL GUIDELINES

EXHIBIT B

Section 2

GENERAL ARCHITECTURAL CONTROL GUIDELINES FOR PROVIDENCE CENTER

In order to provide a shopping experience that both meets the needs of retailers and their customers, the following are the Architectural Control Guidelines for Providence Center located at Cross Hollow Road and Providence Drive in Cedar City, Utah. The Providence Center was designed for long-term viability and has strict governance on architectural attributes, landscaping and signage. A.C.C., as referred to in these guidelines, refers to the Architectural Control Committee. Any and all users within the Providence Center will be required to submit to the A.C.C. all plans and specs for their particular use, including elevations, plot plan with landscape details, color lay-out, materials list and any other information pertinent to users in the Providence Center. All users will need to have approval from the A.C.C. prior to submitting to the city for a building permit.

This project's look and design has been accepted by Cedar City's Municipal Council and it has been concluded that the design is important to the City's General Plan. The Developer has also designed the facility to not only attract local shoppers and visitors, but to create a gathering place for entertainment and festivals. The intentions of the Architectural Control Guidelines are to keep in harmony with these ideas.

ARCHITECTURAL CONTROL GENERAL GUIDELINES

- 1.1 **Exteriors:** Providence Center, from its inception, has been designed in the 1930's Art Deco style. All buildings are required to have elements of this design incorporated in their facilities. Architect's renderings are available. Exteriors of buildings shall be stucco finishes with approved colors. Rock, brick and wood can be used to compliment exterior designs. Architectural elements (such as arches, columns, spires, etc..) true to the Art Deco design should be incorporated in the structure to conform to Providence Center atmosphere and to add interest to customers. All buildings must be approved by A.C.C.
- 1.1A **Building Types in Providence Center:** The Providence Center will consist of four (4) different areas. Only certain business types will be allowed in each area.
- A.1: **Retail South Area** (Section 3)
 - A.2: **Retail North Area** (Section 4)
 - A.3 **Business and Office Park Area** (Section 5)
 - A.4 **Hotel and Lodging Area** (Section 6)
 - A.5 **Restaurant and Food Services Area** (Section 7)

Each will have it's own designated restrictions and variances, but all will incorporate elements from the Art Deco design.

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Section 3 Retail South Area

This area is designated as the largest retail space in the Providence Center located south of Cross Hollows Road. It is anchored by WallMart and will primarily house larger retailers. This space is most visible from Interstate Fifteen and will have the largest parking area. All retail customers in this area will adhere to the 1930's Art Deco Style and be visually synergistic with surrounding elements.

The following guidelines apply:

- 3.1 **Building Design:** All leased space will be designed in the fashion of renderings in Section 8. All national franchises must incorporate franchise standards with the Providence Center's 1930's Art Deco look. Out parcel retail will have the same standard look. These building designs are built to maximize indoor store layout while accomplishing an exciting look for consumers. Stores with unusual building needs must have permission from the A.C.C.

- 3.2 **Colors:** The required colors are from the earth tones in nature, including, but not limited to, blue, brown and gray. Colors that are not allowed include bright colors, pastels or loud colors of any kind. All coloration schemes must receive approval. All properties must also seek approval of color changes for any reason. If franchise or trademark colors are loud or bright in nature they must be tempered and approved by the A.C.C. before new construction or updating of facilities. Any new color change must first be approved by the A.C.C.

- 3.3 **Exterior Lighting:** Exterior street, sidewalk and parking lot lighting has been determined and will be enforced. The uniform look of the shopping center lighting is strictly limited to our antique street lamps. The specific name and model number are as follows:

Antique Street Lamps, Inc.
New York Series
20'6" inch dark green poles
Cast Iron and Steel
A-25 Lumimar, with 250 watt high pressure sodium lamp

Note: There are designated locations for street lights in the Providence Center. If these areas are on purchased properties, the purchaser will be responsible for the purchase and installation of the before designated street light. All electrical conduits lines and bases for the lights will be installed by developer.

- 3.4 **Exterior Glass Windows:** Window coloration must blend with the colors of the retail center. Therefore, windows can vary between clear or bronze. Greens, blues, or any bright colored glass is strictly forbidden in the center. Windows must be integrated into

structural elements as complimentary and not distract from the theme. Also all glass areas open to public must be kept free of clutter or distracting elements not pertaining to ordinary business procedures.

- 3.5 **Sidewalks:** All sidewalks within the Providence Center shall be a minimum 5' width. They must be maintained and kept clear for pedestrian traffic. Coloration of sidewalks must also be in harmony with the 3.2 Colors standards. All sidewalks under control of individual businesses shall be maintained in all weather conditions, kept clean and kept in good repair. Sidewalks should be designed to enhance landscape and allow pedestrian traffic.
- 3.6 **Height:** Any out parcel retail establishments on the Retail South Area shall have a building constructed not to exceed twenty-five (25) feet in height. Each building must be sensitive to main retail area.
- 3.7 **Building Size:** Retail South Area will consist of nearly 300,000 square feet of retail space. Stand-alone retail facilities cannot exceed 7,500 square feet. Retailers with special needs must discuss such issues with the A.C.C.
- 3.8 **Parking:** Any out parcel or stand-alone retail operations shall construct and maintain six (6) parking spaces for every one thousand (1,000) square feet of building space. All parking lots must be maintained free of trash, snow or other obstructions.
- 3.9 **Roofing:** All stand-alone or out parcel buildings must use a parapet roof system. Any equipment or roof mounted obstructions shall be screened in a manner satisfactory to A.C.C.
- 3.10 **Trash Receptacles:** All trash cans, storage bins and receptacles must be fully enclosed. Waste receptacle structures should have three sides of gray split face block construction and the front with a site blocking gate made of chain link with green vinyl fabric or slats. All garbage structures are to be located in back or sides of facilities. No structure will be allowed in front of building. Refuse areas must be kept clean and all trash must be inside bins. Businesses not keeping their refuse area clean will be contacted by Providence Center management and ordered to clean up said area.
- 3.11 **Landscaping:** Leased spaced will have landscaping provided by developer. All other parcels' landscaping within the Providence Center will conform to the following guidelines:
- A. Sod is the only acceptable ground cover.
 - B. Eighty percent (80%) of all tree will be evergreens or conifers.
 - C. For every 500 feet of Sod, there will be an average of one (1) tree.
 - D. All trees must be at least two (2) inches in diameter.
 - E. All tress must be double staked the first year.*

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3.12 Signage: See Section 8 Signage and Architectural Renderings for the Providence Center.

Gravel and rock ground cover, bushes, hedges or other ground covers are not allowed. Flowers and bushes may be used in designated areas, around structures and in architecturally interesting areas. All landscaping plans must be approved by the A.C.C.

F. Shrubbery around buildings will be maintained and pruned.

Section 4 Retail North Area

This area is designated for smaller retail interest that wish to be part of the Providence Center. It is anchored by entertainment features like movies theaters, Gold's Gym, small quaint restaurants, pedestrian oriented squares and other attractive features. This space is visible from Interstate Fifteen and has several elements already in place. All retail customers in this area will adhere to the 1930's Art Deco Style and be visually synergistic with surrounding elements.

The following guidelines apply:

- 4.1 **Building Design:** All leased space will be designed in the fashion of renderings in Section 8. All national franchises must incorporate franchise standards with the Providence Center's 1930's Art Deco look. Out parcel retail will have the same standard look. These building designs are built to maximize indoor store layout while accomplish an exciting look for consumers. Stores with unusual building needs must have permission from the A.C.C.
- 4.2 **Colors:** The required colors are from the earth tones in nature, including, but not limited to, blue, brown and gray. Colors that are not allowed include bright colors, pastels or loud colors of any kind. All coloration schemes must receive approval. All properties must also seek approval of color changes for any reason. If franchise or trademark colors are loud or bright in nature they must be tempered and approved by the A.C.C. before new construction or updating of facilities. Any new color change must first be approved by the A.C.C.
- 4.3 **Exterior Lighting:** Exterior street, sidewalk and parking lot lighting has been determined and will be enforced. The uniform look of the shopping center lighting is strictly limited to our antique street lamps. The specific name and model number are as follows:
Antique Street Lamps, Inc.
New York Series
20'6" inch dark green poles
Cast Iron and Steel
A-25 Luminar, with 250 watt high pressure sodium lamp
- Note:* There are designated locations for street lights in the Providence Center. If these areas are on purchased properties, the purchaser will be responsible for the purchase and installation of the before designated street light. All electrical conduits lines and bases for the lights will be installed by developer.
- 4.4 **Exterior Glass Windows:** Window coloration must blend with the colors of the retail center. Therefore, windows can variate between clear or bronze. Greens, blues, or any bright colored glass is strictly forbidden in the center. Windows must be integrated into

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structural elements as complimentary and not distract from the theme. Also all glass areas open to public must be kept free of clutter or distracting elements not pertaining to ordinary business procedures.

4.5 **Sidewalks:** All sidewalks within the Providence Center shall be a minimum 5' width. They must be maintained and kept clear for pedestrian traffic. Coloration of sidewalks must also be in harmony with the 3.2 Colors standards. All sidewalks under control of individual businesses shall be maintained in all weather conditions, kept clean and kept in good repair. Sidewalks should be designed to enhance landscape and allow pedestrian traffic.

4.6 **Height:** Any out parcel retail establishments on the Retail South Area shall have a building constructed to not exceed thirty-five (35) feet in height. Each building must be sensitive to main retail area. Specialized needs (example; climbing wall) can be discussed with A.C.C.

4.7 **Building Size:** Retail South Area will consist of nearly 90,000 square feet of retail space. Stand-alone retail facilities cannot exceed 12,500 square feet. Retailers with special needs may discuss such issues with the A.C.C.

4.8 **Parking:** Any out parcel or stand-alone retail operations shall construct and maintain six (6) parking spaces for every one thousand (1,000) square feet of building space. All parking lots must be maintained free of trash, snow or other obstructions.

4.9 **Roofing:** All stand-alone or out parcel buildings must use a parapet roof system. Any equipment or roof mounted obstructions shall be screened in a manner satisfactory to A.C.C.

4.10 **Trash Receptacles:** All trash cans, storage bins and receptacles must be fully enclosed. Waste receptacle structures should have three sides of gray split face block construction and the front with a site blocking gate made of chain link with green vinyl fabric or slats. All garbage structures are to be located in back or sides of facilities. No structure will be allowed in front of building. Refuse areas must be kept clean and all trash must be inside bins. Businesses not keeping their refuse area clean will be contacted by Providence Center management and ordered to clean up said area.

4.11 **Landscaping:** Leased spaced will have landscaping provided by developer. All other parcels' landscaping within the Providence Center will conform to the following guidelines:

- A. Sod is the only acceptable ground cover.
- B. Eighty percent (80%) of all tree will be evergreens or conifers.
- C. For every 500 feet of Sod, there will be an average of one (1) tree.
- D. All trees must be at least two (2) inches in diameter.

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- E. All trees must be double staked the first year.
- F. Shrubbery around buildings will be maintained and pruned.

Gravel and rock ground cover, bushes, hedges or other ground covers are not allowed. Flowers and bushes may be used in designated areas, around structures and in architecturally interesting areas. All landscaping plans must be approved by the A.C.C.

4.12 Signage: See Section 8 Signage and Architectural Renderings for the Providence Center

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Section 5 BUSINESS AND OFFICE PARK

The Providence Center Business and Office Park is the premiere office center in Southern Utah. All buildings will have a dignified presence that will allow businesses to express professionalism and modern amenities. The businesses that select this area will have high expectations and want their clientele to visit them in state-of-the-art office space. Medical professionals, engineers, lawyers, and many other office people will be able to work in an area with incredible energy and be visible from Southern Utah's most innovative retail/entertainment center.

In order to facilitate the atmosphere proper for such businesses the following articles are pertinent:

1.1 Building Design: All buildings in this development will provide "Class A" office space and amenities. The buildings will have a dignified presence that reflects the surrounding view and landscape. All buildings will have a brick exterior of earth tone colors that states a dignified presence. All buildings will display architectural features of pitched roofs, large glass windows, arches, gables and other features that give the building a unique presence. The design will also incorporate traits that will allow the structure to stand the test of time and not be out of place due to obsolescence. The buildings exterior areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible with Providence Center. All building designs must have schematics, elevations and other necessary drawings approved by the A.C.C.

5.2 Colors: The required colors are from the earth tones in nature, including, but not limited to, blue, brown and gray. Colors that are not allowed include bright colors, pastels or loud colors of any kind. All coloration schemes must receive approval. All properties must also seek approval of color changes for any reason. If franchise or trademark colors are loud or bright in nature they must be tempered and approved by the A.C.C. before new construction or updating of facilities. Any new color change must first be approved by the A.C.C.

5.3 Exterior Lighting: Exterior street, sidewalk and parking lot lighting has been determined and will be enforced. The uniform look of the shopping center lighting is strictly limited to our antique street lamps. The specific name and model number are as follows:

Antique Street Lamps, Inc.
New York Series
20'6" inch dark green poles
Cast Iron and Steel
A-25 Lumina, with 250 watt high pressure sodium lamp

Note: There are designated locations for street lights in the Providence Center. If these

areas are on purchased properties, the purchaser will be responsible for the purchase and installation of the before designated street light. All electrical conduits lines and bases for the lights will be installed by developer.

- 5.4 **Exterior Glass Windows:** Window coloration must blend with the colors of the retail center. Therefore, windows can variate between clear or bronze. Greens, blues, or any bright colored glass is strictly forbidden. Windows must be integrated into structural elements as complimentary and not distract from the theme. Also all glass areas open to the public must be kept free of clutter or distracting elements not pertaining to ordinary business procedures. Any drive up window area will also be maintained free of clutter. Office buildings made of entirely of glass are not acceptable in this business park.
- 5.5 **Sidewalks:** All sidewalks within the Providence Center shall be a minimum 5' width. They must be maintained and kept clear for pedestrian traffic. Coloration of sidewalks must also be in harmony with the **5.2 Colors** standards. All sidewalks under control of individual businesses shall be maintained in all weather conditions, kept clean and kept in good repair. Sidewalks should be designed to enhance landscape and allow pedestrian traffic.
- 5.6 **Height:** The buildings should not exceed three (3) stores.
- 5.7 **Building Size:** Office buildings cannot exceed 35,000 square feet.
- 5.8 **Parking:** Buildings in this park must provide five (5) parking space for every one thousand (1,000) square feet of office space.
- 5.9 **Roofing:** All office buildings in this park must have pitched roofs. The only allowable coverings are architectural asphalt or flat concrete roof tile. Coloration of the roof is the same as found in section **5.2 Color**. Roof lines must be carefully engineered to be an added feature with the structure and not detracting.
- 5.10 **Trash Receptacles:** All trash cans, storage bins and receptacles must be fully enclosed. Waste receptacle structures should have three sides of gray split face block construction and the front with a site blocking gate made of chain link with green vinyl fabric or slats. All garbage structures are to be located in back or sides of facilities. No structure will be allowed in front of building. Refuse areas must be kept clean and all trash must be inside bins. Businesses not keeping their refuse area clean will be contacted by Providence Center management and ordered to clean up said area.
- 5.11 **Landscaping:** Leased spaced will have landscaping provided by developer. All other parcels' landscaping within the Providence Center will conform to the following guidelines:

A. Sod is the only acceptable ground cover.

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- B. Eighty percent (80%) of all tree will be evergreens or conifers.
 - C. For every 500 feet of Sod, there will be an average of one (1) tree.
 - D. All trees must be at least two (2) inches in diameter.
 - E. All trees must be double staked the first year.
 - F. Shrubbery around buildings will be maintained and pruned.
- Gravel and rock ground cover, bushes, hedges or other ground covers are not allowed. Flowers and bushes may be used in designated areas, around structures and in architecturally interesting areas. All landscaping plans must be approved by the A.C.C.
- 5.12 Signage: See Section 8 Signage and Architectural Renderings for the Providence Center

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Section 6

HOTELS AND LODGING AREAS

Providence Center's Hotels and Lodging areas are two pad sites, one in the Retail North Area and one between Royal Hunte Drive and Cross Hollows Road. Both of these properties are to be products that are attractive to a mid- to higher-range customer base. The hotels should not only integrate the 1930's Art Deco look, but also offer high customer service standards and a quality staying experience. Hotels should not have any elements that distract from the Providence Center atmosphere. The following articles must be followed:

- 6.1 **Exteriors:** All buildings are required to have elements of the 1930's Art Deco design incorporated in their facilities. Architect's renderings are available. Exteriors of buildings shall be stucco finishes with approved colors. Rock, brick and wood can be used to compliment exterior designs. Architectural elements (such as arches, columns, spires, etc..) true to the Art Deco design should be incorporated to the structure to conform to Providence Center atmosphere and add interest to customers. Hotels must strive to incorporate trademark business elements into the Providence Center design. All buildings must be approved by A.C.C.
- 6.2 **Colors:** The required colors are from the earth tones in nature, including, but not limited to, blue, brown and gray. Colors that are not allowed included bright colors, pastels or loud colors of any kind. All coloration schemes must receive approval. All properties must also seek approval of color changes for any reason. If franchise or trademark colors are loud or bright in nature they must be tempered and approved by the A.C.C. before new construction or updating of facilities. Any new color change must first be approved by the A.C.C.
- 6.3 **Height:** The building should not exceed three (3) stores.
- 6.4 **Design & Construction:** The buildings areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible with Providence Center. The Building footings shall not encroach from one tract onto another. Building designs also need to be sensitive to all structures in Providence Center and to landscaped common areas. The design and construction shall be of high quality. No building shall have a metal exterior.
- 6.5 **Fire Protection:** Any building constructed in the Providence Center shall be constructed and operated in such a manner which will preserve the sprinkler pressure rate on the other buildings in the Providence Center. Also, hotels must make every effort to design systems to contain fires to individual properties.

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6.6 **Parking:** When developing parcels within the Providence Center, the owner of the parcel shall provide and maintain a parking ration of six (6) spaces per one thousand (1,000) square feet of building space. Parking should also meet all ADA and city requirements.

6.7 **Exterior Lighting:** Exterior street, sidewalk and parking lot lighting has been determined and will be enforced. The uniform look of the shopping center is lighting is strictly limited to our antique street lamps. The specific name and model number are as follows:

Antique Street Lamps, Inc.

New York Series

20'6" inch dark green poles

Cast Iron and Steel

A-25 Luminair, with 250 watt high pressure sodium lamp

Note: There are designated locations for street lights in the Providence Center. If these areas are on purchased properties, the purchaser will be responsible for the purchase and installation of the before designated street light. All electrical conduits lines and bases for the lights will be installed by developer.

6.8 **Exterior Glass Windows:** Window coloration must blend with the colors of the retail center. Therefore, windows can varyiate between clear or bronze. Greens, blues, or any bright colored glass is strictly forbidden in the center. Windows must be integrated into structural elements as complimentary and not distract from the theme. Also all glass areas open to public must be kept free of clutter or distracting elements not pertaining to ordinary business procedures.

6.9 **Sidewalks:** All sidewalks within the Providence Center shall be a minimum 5' width. They must be maintained and kept clear for pedestrian traffic. Coloration of sidewalks must also be in harmony with the 6.2 Colors standards. All sidewalks under control of individual businesses shall be maintained in all weather conditions, kept clean and kept in good repair. Sidewalks should be designed to enhance landscape and allow pedestrian traffic.

6.10 **Roofing:** Only architectural asphalt or flat concrete roof tile is acceptable on slated roof sections. In flat roof construction, Hotels should adopt a parapet art deco look that will be designed to hide all roof-mounted items including heating, air-conditioning, satellite dishes or any other roof mounted object. Metal roofing, shake shingle, flat-but asphalt shingles or S-Barrel Concrete tile roofs are unacceptable.

6.11 **Trash Receptacles:** All trash cans, storage bins and receptacles must be fully enclosed. Waste receptacle structures should have three sides of gray split face block construction and the front with a site blocking gate made of chain link with green vinyl fabric or slats. All garbage structures are to be located in back or sides of facilities. No structure will be allowed in front of building. Refuse areas must be kept clean and all trash must be inside

bins. Businesses not keeping their refuse area clean will be contacted by Providence Center management and ordered to clean up said area.

6.12 **Landscaping:** Leased spaced will have landscaping provided by developer. All other parcels' landscaping within the Providence Center will conform to the following guidelines:

- A. Sod is the only acceptable ground cover.
- B. Eighty percent (80%) of all tree will be evergreens or conifers.
- C. For every 500 feet of Sod, there will be an average of one (1) tree.
- D. All trees must be at least two (2) inches in diameter.
- E. All tress must be double staked the first year.
- F. Shrubbery around buildings will be maintained and pruned.

Gravel and rock ground cover, bushes, hedges or other ground covers are not allowed. Flowers and bushes may be used in designated areas, around structures and in architecturally interesting areas. All landscaping plans must be approved by the A.C.C.

6.13 **Signage:** See Section 8 Signage and Architectural Renderings for the Providence Center

6.14 **Swimming Pools:** All swimming pools shall be indoor pools integrated with the layout of the lodging facility. There are no exterior swimming pools allowed.

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Section 7 RESTAURANT AND FOOD SERVICES AREA

Providence Center wants to offer the public a variety of food services from sit-down family dining to fast food service. With the growth of the Shakespeare Festival, Southern Utah University and other tourist activities, the need for a variety of quality food services are needed in this project. The Center wants food service to be an integral part of its over all experience. Knowing that some national franchises have very distinctive buildings and images, the Providence Center wishes to incorporate those unique issues into a format that blends them into the Art Deco theme. Those companies that have standard restaurant layouts are asked to incorporate the Providence color and architectural element schemes. Each restaurant will have to show complete plans to the A.C.C. for approval in this center. Other ordinances are as follows:

7.1 Building Design: Due to national franchise standards, restaurants, fast food and other food services must meet with the center development team and A.C.C. for a project review. If architectural elements compromise food provider's national standards, developer and A.C.C. can negotiate variances to meet those standards. All food services will be asked to conform to center colors, landscaping and signage requirements. Interested restaurants should try to incorporate some architectural elements in their design.

7.2 Colors: The required colors are from the earth tones in nature, including, but not limited to, blue, brown and gray. Colors that are not allowed included bright colors, pastels or loud colors of any kind. All coloration schemes must receive approval. All properties must also seek approval of color changes for any reason. If franchise or trademark colors are loud or bright in nature they must be tempered and approved by the A.C.C. before new construction or updating of facilities. Any new color change must first be approved by the A.C.C.

7.3 Exterior Lighting: Exterior street, sidewalk and parking lot lighting has been determined and will be enforced. The uniform look of the shopping center is strictly limited to our antique street lamps. The specific name and model number are as follows:

Antique Street Lamps, Inc.
New York Series
20'6" inch dark green poles
Cast Iron and Steel
A-25 Luminair, with 250 watt high pressure sodium lamp

Note: There are designated locations for street lights in the Providence Center. If these areas are on purchased properties, the purchaser will be responsible for the purchase and installation of the before designated street light. All electrical conduits lines and bases for the lights will be installed by developer.

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- 7.4 **Exterior Glass Windows:** Window coloration must blend with the colors of the retail center. Therefore, windows can variate between clear or bronze. Greens, blues, or any bright colored glass is strictly forbidden in the center. Windows must be integrated into structural elements as complimentary and not distract from the theme. Also all glass areas open to public must be kept free of clutter or distracting elements not pertaining to ordinary business procedures. Any drive up window area will also be maintained free of clutter.
- 7.5 **Sidewalks:** All sidewalks within the Providence Center shall be a minimum 5' width. They must be maintained and kept clear for pedestrian traffic. Coloration of sidewalks must also be in harmony with the 7.2 Colors standards. All sidewalks under control of individual businesses shall be maintained in all weather conditions, kept clean and kept in good repair. Sidewalks should be designed to enhance landscape and allow pedestrian traffic.
- 7.6 **Height:** Food establishments on the Retail South Area shall have a building constructed to not exceed twenty-five (25) feet in height. Retail North Area Buildings are limited to the height of thirty-five (35) feet.
- 7.7 **Building Size:** Retail South Area stand-alone restaurant facilities cannot exceed 7,500 square feet. Retail North Area stand-alone restaurant may not exceed 9,500 square feet. Variances must be discussed with A.C.C.
- 7.8 **Parking:** Any out parcel or stand-alone food service building shall construct and maintain twelve (12) parking spaces for every one thousand (1,000) square feet of building space. All parking lots must be maintained free of trash, snow or other obstructions.
- 7.9 **Roofing:** All stand-alone or out parcel buildings must use a parapet roof system. Any equipment or roof mounted obstructions shall be screened in a manner satisfactory to A.C.C.
- 7.10 **Trash Receptacles:** All trash cans, storage bins and receptacles must be fully enclosed. Waste receptacle structures should have three sides of gray split face block construction and the front with a site blocking gate made of chain link with green vinyl fabric or slats. All garbage structures are to be located in back or sides of facilities. No structure will be allowed in front of building. Refuse areas must be kept clean and all trash must be inside bins. Businesses not keeping their refuse area clean will be contacted by Providence Center management and ordered to clean up said area.
- 7.11 **Landscaping:** Leased spaced will have landscaping provided by developer. All other parcels' landscaping within the Providence Center will conform to the following guidelines:
- A. Sod is the only acceptable ground cover. 00420607 BK00712 Pg00232

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7.12 Signage: See Section 8 Signage and Architectural Renderings for the Providence Center

Gravel and rock ground cover, bushes, hedges or other ground covers are not allowed. Flowers and bushes may be used in designated areas, around structures and in architecturally interesting areas. All landscaping plans must be approved by the A.C.C.

- B. Fifty percent (80%) of all tree will be evergreens or conifers.
- C. For every 500 feet of Sod, there will be an average of one (1) tree.
- D. All trees must be at least two (2) inches in diameter.
- E. All trees must be double staked the first year.
- F. Shrubbery around buildings will be maintained and pruned.

Section 8

SIGNAGE AND ARCHITECTURAL RENDERINGS FOR THE PROVIDENCE CENTER CEDAR CITY, UTAH

In order to preserve the uniformity of the Providence Center the following criteria for signage is in effect. Signs will be properly managed so they will not lose their effectiveness or create visual clutter. Signs should promote the look and feel of the center. Their design must be in harmony with the Providence Center design and color schemes.

- 8.1 **Building Signs:** All Signage that is to be attached to the building, must be located in designated areas usually noted by metal beam over hangs or canopies. Each building will have designated areas for attached signs. The use of exterior neon signs approved and exposed neon signs are preferred. Any variation from this method is permitted only by A.C.C. review. Signs are required to be professionally designed and manufactured. All signage must be reviewed by A.C.C. All signage should conform to building and not have a distracting appearance. All signs should not extend beyond eight (8) inches beyond designated area. Internally illuminated plastic can signs are prohibited.
- 8.2 **Stand Alone Signs:** All exterior stand alone signs will be monument or low profile signs. These signs will be uniform throughout the development and should serve as on-premise identifications signs with no exposed poles, uprights or braces. Sign heights will not exceed five (5) feet in height and their surface area cannot consist of more than twenty-five (25) square feet of surface area per side. Stores will be able to display company logos in a multi-tenant monument sign designed for their space. Sign design will be consistent with the Providence Center architectural design and colors. Uniform directional signage will be provided throughout center. Any exceptions for hotels and food establishments must be approved by the A.C.C.
- 8.3 **Special Sale Signs or Temporary Signs:** All temporary signs used to advertise grand openings, special sales or special events must be professionally designed and fabricated. Special Sale Signs include banners, special ground signs, inflatable signs and window signs. A-Frame signs, outdoor paper signs and hand painted wooden signs are prohibited. Special Sale Signs are only allowed for the duration of the event. Any special sign displayed for more than one month will be reviewed and removed if the event has expired.
- 8.4 **Non-Conforming Signs:** Any sign which does not conform to sign code or Providence

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Jeff Dansie
Rainbow Signs
244 Westview Drive #1
Cedar City, Utah 84720
(435) 586-5616

Questions on signage can be addressed to:

- 8.5 **Incidental Signs:** Any sign used for secondary purposes such as "No Parking", "Entrance," "Load Only" and other similar directives, will be professionally designed, to exceed one (1) foot by one (1) foot in size.
 - 8.6 **Abandoned Signs:** Any sign which has been discontinued for a period of thirty (30) days, must be immediately removed or A.C.C. will have it removed at owners'/lessees' expense.
 - 8.7 **Hours of Operation Signs:** All hours of operation signs must be professionally printed on front doors or windows. Plastic "Open" and "Closed" signs are not permitted. Neon window signs are encouraged.
- Center Architectural Guidelines must be immediately removed or A.C.C. will have sign removed at owners'/lessees' expense.