

12/

7787948  
12/27/2000 01:31 PM 93.00  
Book - 8410 Pg - 8311-8352  
**NANCY WORKMAN**  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: RDJ, DEPUTY - WI 42 p.

RECORDING REQUESTED BY: )  
AND WHEN RECORDED MAIL TO: )  
DAVID E. GEE, Esq. )  
PARR WADDOUPS BROWN GEE & )  
LOVELESS )  
185 SOUTH STATE STREET, SUITE 1300 )  
SALT LAKE CITY, UTAH 84111 )

---

Space Above This Line Is For Recorder's Use Only

7787948

**DECLARATION AND ESTABLISHMENT  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT OF EASEMENTS**

3K8410PG8311

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	
DEFINITIONS	
1.1	1
1.2	1
1.3	2
1.4	2
1.5	2
1.6	2
1.7	2
1.8	2
1.9	3
1.10	3
1.11	3
1.12	4
1.13	4
1.14	4
1.15	5
1.16	5
1.17	5
1.18	5
1.19	5
1.20	6
1.21	6
1.22	6
1.23	6
1.24	6
1.25	6
1.26	6
1.27	7
1.28	7
1.29	7
1.30	7
1.31	7
1.32	7
1.33	8
1.34	9
1.35	9
1.36	9
1.37	9
1.38	10

1.39	“Restrictions” .....	10
1.40	“Retail Building” .....	10
1.41	“Retail Building Parcels” .....	10
1.42	“Retail Parking Parcels” .....	10
1.43	“Rio Grande Street Easement” .....	10

ARTICLE 2  
USE IN GENERAL

2.1	Lawful Use.....	11
2.2	Use of Hotel Building Parcel .....	11
2.3	Use of Hotel Parking Parcel.....	11
2.5	Use of Residential Building Parcels .....	12
2.6	Use of Residential Parking Parcels.....	12
2.7	Use of Retail Building Parcels.....	12
2.8	Use of Retail Parking Parcels .....	12
2.9	Zoning.....	13

ARTICLE 3  
CONSTRUCTION

3.1	Buildings and Improvements Only in Designated Areas.....	13
3.2	Initial Building Approval.....	13
3.3	Alteration Approval .....	14
3.4	Construction Procedures .....	14

ARTICLE 4  
PROJECT EASEMENTS

4.1	Grant of Easements .....	15
4.2	Permitted Common Area Uses.....	16
4.3	Common Area Alteration.....	18
4.4	Encroachment Easement.....	18
4.5	Parking .....	18
4.6	Underground Supports .....	19

ARTICLE 5  
OPERATION AND MAINTENANCE OF BUILDING AREA AND COMMON AREA

5.1	Taxes and Assessments.....	20
5.2	Building and Improvement Maintenance.....	21
5.3	Utilities and Central Plant.....	22
5.4	Rules and Regulations.....	22
5.5	Maintenance of Residential Common Areas .....	22
5.6	Maintenance of Office Common Areas .....	23
5.7	Maintenance of Hotel Common Areas .....	24
5.8	Takeover of Maintenance .....	25

3K8410P68313

ARTICLE 6  
INSURANCE

6.1 Liability Insurance ..... 26  
6.2 Certificates ..... 27  
6.3 Indemnification ..... 27

ARTICLE 7  
ASSESSMENT LIEN

7.1 Assessment Lien Procedure ..... 28  
7.2 Personal Obligation..... 28  
7.3 Priority ..... 28  
7.4 Cure..... 29  
7.5 Contest ..... 29

ARTICLE 8  
CASUALTY

8.1 Damage to Buildings and Other Improvements..... 30  
8.2 Damage to Common Areas and Parking Facilities ..... 30

ARTICLE 9  
GENERAL PROVISIONS

9.1 Successors and Assigns..... 31  
9.2 Run With the Land..... 31  
9.3 Modification..... 31  
9.4 No Dedication to Public..... 32  
9.5 No Cancellation ..... 32  
9.6 Survival..... 33  
9.7 No Merger..... 33  
9.8 Mortgagee Protection..... 33  
9.9 Remedies..... 33  
9.10 No Third Party Beneficiary..... 33  
9.11 Condemnation ..... 33  
9.12 Captions ..... 34  
9.13 Consent ..... 34  
9.14 Assignment ..... 34  
9.15 Notices ..... 34  
9.16 Estoppel Certificates ..... 35  
9.17 Subdivision ..... 35  
9.18 Jurisdiction..... 35  
9.19 Other Agreements ..... 35  
9.20 Non-Discrimination ..... 35  
9.21 Declarant ..... 35

**DECLARATION AND ESTABLISHMENT  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT OF EASEMENTS**

THIS DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS is made as of the 15th day of December, 2000 by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Declarant").

RECITALS

A. Declarant is the owner of certain parcels of real property located in the City of Salt Lake City, Salt Lake County, Utah, more particularly described on Exhibit "A" attached hereto upon which Declarant intends to develop an integrated retail, commercial, entertainment, residential, office and/or community project (the "Project").

B. Declarant plans to develop and plan for the development of the Project as an integrated retail, commercial, entertainment, residential, office and/or community project for the mutual benefit of all real property in the Project and, for such purposes, does hereby fix and establish the "Restrictions" (as hereinafter defined), upon and subject to which all of the Project, or any part thereof, shall be improved, held, leased, sold and/or conveyed. It is the intent of this Declaration that each and all of the easements, covenants, conditions and restrictions set forth in this Declaration are for the mutual benefit of the "Parcels" (as hereinafter defined) and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration shall run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels (except to the extent otherwise stated herein) and constitute covenants running with the land pursuant to applicable law.

ARTICLE 1

DEFINITIONS

1.1 "Assessment Lien" shall mean that lien created by reason of the delinquency described in and upon recordation of a "Notice of Assessment Lien" (as hereinafter defined).

1.2 "Building" shall mean any enclosed structure (excluding parking structures and parking facilities) designated for the exclusive use of an occupant or limited occupant(s), as the case may be, placed, constructed or located on a Parcel, which for the purpose

of this Declaration shall include any appurtenant supports, service areas and other outward extensions.

1.3 “Building Area” shall mean the limited areas of the Project within which Buildings may be constructed, placed or located. .

1.4 “City Easement Agreements” shall mean, collectively, the agreements relating to the “Depot Easement” (as hereinafter defined), the “First South Easement” (as hereinafter defined), the “Hotel Walkway Easement” (as hereinafter defined), the “North Temple Frontage Easement” (as hereinafter defined), the “Plaza Easement” (as hereinafter defined) and the “Rio Grande Street Easement” (as hereinafter defined).

1.5 “Common Areas” shall mean all the areas within the exterior boundaries of the Project which are made available for the general use, convenience and benefit of all “Permittees” (as hereinafter defined) of a particular Parcel (or Parcels) and/or the public. Without limitation, Common Areas shall include the following areas within the exterior boundaries of the Parcels: (i) all parking areas, multi-level parking decks and underground parking facilities (it being understood, however, that, pursuant to the terms of this Declaration, certain parking facilities, including those located on a “Residential Parking Parcel” (as hereinafter defined) and/or on the “Hotel Parking Parcel” (as hereinafter defined), may not be available for the non-exclusive use of all Permittees of the Project); (ii) all roadways and driveways; (iii) all sidewalks and walkways; (iv) all landscaped and planted areas, including areas immediately adjacent to the Project such as, but not limited to, landscaped medians; and (v) all lobby and waiting areas (including office building and hotel lobbies (exclusive of sections exclusively leased to individual tenants)). Common Areas shall specifically include those certain easement areas to which Owners of the Project have rights pursuant to the City Easement Agreements. Notwithstanding anything to the contrary contained in this Declaration or elsewhere, any rights granted pursuant to this Declaration relating to any property that is the subject of a City Easement Agreement shall be subject to Declarant’s rights, obligations and restrictions, as set forth in the relevant City Easement Agreement.

1.6 “Cultural Building Space” shall mean any Parcel located within the Project and used for cultural purposes (such as museum, art or other artistically or historically educational purposes), which shall be designated as “Cultural Building Space” by Declarant at any time and from time to time pursuant to Section 9.3.

1.7 “Declaration” shall mean this Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements.

1.8 “Default Rate” shall mean that annual rate of interest equal to the interest rate per annum published by the Wall Street Journal as the prime rate (or in the event the Wall Street Journal no longer publishes a prime rate, then the prime rate or reference rate announced by the then largest chartered bank in Utah in terms of deposits) from time to time plus two percentage (2%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.9 “Depot Easement” shall mean that certain easement described in that certain Depot Pedestrian and Public Use Easement agreement between Declarant and the Redevelopment Agency of Salt Lake City, a public agency organized and existing under the Utah Neighborhood Development Act (the “Agency”) dated December 23, 1999 and recorded in the office of the County Recorder, Salt Lake County, Utah on January 13, 2000 as Entry Number 7553966, in Book 8336, at Page 1284, providing for, among other things, pedestrian access and the free and uninterrupted enjoyment and public use of the area described in such agreement.

1.10 “First South Easement” shall mean those certain easements described in that certain Easement Agreement (With Boundary Agreement) between Declarant and Salt Lake City Corporation, a municipal corporation of the State of Utah (the “City”) dated January 3, 2000 and recorded in the office of the County Recorder, Salt Lake County, Utah on January 13, 2000 as Entry Number 7553961, in Book 8336, at Page 1170, providing for, among other things, certain use easements granted by City to Declarant with respect to the areas described in such agreement.

1.11 “Floor Area” shall mean (i) with respect to a “Retail Building Parcel” (as hereinafter defined), the actual number of square feet of space contained on each floor within each separately demised space within a “Retail Building” (as hereinafter defined), including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Retail Building and from the center of interior demising walls which separate independently demised premises from other premises; provided, however, that the following areas shall not be included in such calculations (except to the extent the following areas are taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception): incidental office space located on other than the main level of any particular premises used by a Permittee for administrative purposes and which is not open or accessible to the general public; mezzanine space used for projector room purposes in a permitted theatre; emergency exit areas (located outside of theatre auditoriums and waiting and concession areas), exit corridors and adjacent stairwells designated for use by a permitted theatre; and space attributable to any multi-deck, platform or structural level used for the storage of merchandise and located vertically above ground floor; (ii) with respect to an “Office Building Parcel” (as hereinafter defined), all “Rentable Area” as defined and determined in accordance with BOMA standards (Building Owners and Managers Association Method for Measuring Floor Area in Office Buildings, ANSI Z65.1-1996) contained within an “Office Building” (as hereinafter defined); (iii) with respect to a “Residential Building Parcel” (as hereinafter defined), the actual number of square feet of space contained on each floor within each “Residential Building” (as hereinafter defined) located on a Residential Building Parcel, including lobby areas and basement space, as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Residential Building and from the center of

interior demising walls which separate independently demised premises from other premises; (iv) with respect to the "Hotel Building Parcel" (as hereinafter defined), the actual number of square feet of space contained on each floor within the "Hotel Building" (as hereinafter defined), including lobby, restaurant and retail areas (as applicable), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently separated spaces or premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Hotel Building and from the center of interior demising walls which separate independently separated spaces or premises; and (v) with respect to all other Buildings, the actual number of square feet of space contained on each floor within each separately demised space within a Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Building and from the center of interior demising walls which separate independently demised premises from other premises. Notwithstanding anything to the contrary herein, in no event shall Floor Area for any Building located on a Residential Building Parcel, Office Building Parcel or the Hotel Building Parcel, include space used for Building utilities or mechanical equipment. Within thirty (30) days of a request, the Owner of a Parcel shall certify to another requesting Parcel Owner the amount of Floor Area applicable to each Building on its "Parcel" (as hereinafter defined). If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request, such Parcel Owner shall furnish a copy of the survey to the requesting Parcel Owner for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building (or any portion thereof), the Floor Area of that Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Owner upon whose Parcel such Building is located, shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Owner requesting the same.

1.12 "Governmental Restrictions" shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.13 "Hotel Building" shall mean any building located on the Hotel Building Parcel, used primarily for temporary housing/hotel purposes and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Hotel Buildings, as more particularly set forth in Section 2.2 below.

1.14 "Hotel Building Parcels" shall mean any Parcels which may be designated as "Hotel Building Parcels" by the Declarant at any time or from time to time pursuant to Section



9.3, upon which a Hotel Building is or will be located. A "Hotel Building Parcel" shall mean any of such Parcels, individually.

1.15 "Hotel Common Area" shall mean all the areas within a Hotel Building and the Hotel Parking Parcel which are made available for the general use, convenience and benefit of all Permittees of the Hotel Building Parcel (or other Parcels) and/or the public, including lobby and waiting areas, but excluding landscaped areas and other exterior areas located on the Hotel Building Parcel, which shall (unless otherwise elected by Declarant, in which event such areas shall be included in "Hotel Common Areas") constitute "Common Areas" generally and shall be maintained by "Manager" (as hereinafter defined) pursuant to other matters of record affecting the Hotel Building and/or Hotel Parking Parcels. Without limitation, Hotel Common Area shall include the following areas: (i) all parking areas, including parking structures, located on the "Hotel Parking Parcel" (as hereinafter defined) adjacent to the Hotel Building Parcel (the "Hotel Parking Facility"); and (ii) all roadways and driveways leading from public streets to the Hotel Parking Facility. In addition, the Hotel Common Area shall include the area covered by the "Hotel Walkway Easement" (as hereinafter defined).

1.16 "Hotel Parking Parcels" shall mean any Parcels which may be designated as "Hotel Parking Parcels" by Declarant at any time and from time to time pursuant to Section 9.3, upon which the parking facilities for use in connection with the Hotel Building Parcel are or will be located. Notwithstanding anything to the contrary contained in this Declaration, the Hotel Parking Parcel shall be used exclusively for vehicular parking and uses incidental thereto. A "Hotel Parking Parcel" shall mean any of such Parcels, individually.

1.17 "Hotel Walkway Easement" shall mean that certain public walkway easement described in that certain Hotel Pedestrian Easement agreement between Declarant and the Agency dated December 23, 1999 and recorded in the office of the County Recorder, Salt Lake County, Utah on January 13, 2000 as Entry Number 7553967, in Book 8336, at Page 1302.

1.18 "Index" shall mean the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau") "All Items" for All Urban Consumers, U.S. City Average (1982-84=100). Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as determined by Declarant shall be substituted therefor.

1.19 "Manager" shall mean a Person so designated by Declarant to perform the obligations of "Manager" under this Declaration. At any time, without the consent of any Owner or Declarant, Manager shall have the right to assign its rights and obligations as "Manager" under this Declaration to any entity or Person controlling, controlled by or under common control with The Boyer Company, L.C., a Utah limited liability company. At any time under this Declaration, Declarant shall have the right, without the consent of any Owner, to (i) assume any or all of the rights and obligations of "Manager" under this Declaration, and/or (ii) assign any or all of its rights as "Declarant" under this Agreement to Manager. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record which is subordinate to this Declaration, to the extent Manager or the Owners of the Retail Building Parcels fail to perform (pursuant to the terms thereof) the obligations required of Manager under any of the

City Easement Agreements, the City or the Agency, as the case may be, shall have the right (as set forth in, and pursuant to the terms of, the relevant City Easement Agreement) to perform such obligations on behalf of Manager under the subject City Easement Agreement, in which event, the Owners of the Retail Building Parcels shall reimburse to the City or Agency, as the case may be, the reasonable costs of such work pursuant to and in accordance with the terms of the subject City Reimbursement Agreement.

1.20 “Mortgage” shall mean an indenture of mortgage or deed of trust on a Parcel or, a “Sale and Leaseback” (meaning a transaction whereby an Owner conveys its fee or a leasehold estate in such Parcel and such conveyance is followed immediately by a leaseback or sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party wholly controlled by such Owner).

1.21 “Mortgagee” shall mean any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any Parcel shall be subordinate to this Declaration.

1.22 “North Temple Frontage Easement” shall mean that certain easement described in that certain North Temple Frontage Road Grant of Easement agreement between Declarant and the Agency dated December 23, 1999 and recorded in the office of the County Recorder, Salt Lake County, Utah on January 13, 2000 as Entry Number 7553965, in Book 8336, at Page 1263, providing for, among other things, public use, including pedestrian and vehicular traffic, of the area described in such agreement.

1.23 “Notice of Assessment Lien” shall mean a notice recorded in the office of the County Recorder, Salt Lake County, Utah, and such other place as may be required by law, by any person to whom is owed any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.24 “Office Building” shall mean any building located on an Office Building Parcel, used primarily for office purposes, and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Office Buildings, as more particularly set forth in Section 2.4 below. An “Office Building” may be a physical portion of a Building that includes office space, retail space and/or parking facilities; in such event “Office Building” refers only to the portion of the larger Building that is located on or within the Office Building Parcel.

1.25 “Office Building Parcels” shall mean those certain Parcels which shall be designated as “Office Building Parcels” by Developer at any time and from time to time in accordance with Section 9.3, upon which an Office Building or Office Buildings are or will be located. An “Office Building Parcel” shall mean any of such Parcels, individually.

1.26 “Office Common Area” shall mean all the areas within an Office Building which are made available for the general use, convenience and benefit of all Permittees of an

3K8410P68320

Office Building Parcel (or other Parcels) and/or the public, including all lobby and waiting areas, but excluding landscaped areas and other exterior areas located on an Office Building Parcel, which shall (unless otherwise elected by Declarant, in which event such areas shall be included in "Office Common Areas") constitute "Common Areas" generally and shall be maintained by Manager pursuant to other matters of record affecting the Office Building Parcels.

1.27 "Owner" shall mean each person, who, at any given time, holds fee title to any full Parcel, or a ground lessee of any full Parcel (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the office of the County Recorder, Salt Lake County, Utah). An Owner shall not include tenants and sublessees of less than an entire Parcel. In the event, at any time, that an interest in the same Parcel shall be vested in more than one person, such persons shall designate one of them to act on behalf of all such persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such person and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Declaration. An original of such designation shall be recorded in the office of the County Recorder, Salt Lake County, Utah. A majority of such persons shall have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

1.28 "Parcel" or "Parcels" shall mean those several parcels which together comprise the Project and which are designated (either in this Declaration or by future modification of this Declaration) as a Cultural Building Space, a Hotel Parcel, a Hotel Parking Parcel, an Office Parcel, a Residential Building Parcel, a Residential Parking Parcel, a Retail Parking Parcel and a Retail Building Parcel, and such further subdivision of any such Parcel as may be approved by Declarant.

1.29 "Parties" shall mean the Owners.

1.30 "Permittees" shall mean the Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; and respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.31 "Person" shall mean any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.32 "Plaza Easement" shall mean that certain easement described in that certain Plaza Pedestrian and Public Use Easement and Programming Agreement between Declarant and the Agency dated December 23, 1999 and recorded in the office of the County Recorder, Salt Lake County, Utah on January 13, 2000 as Entry Number 7553964, in Book 8336, at Page 1240, providing for, among other things, pedestrian access and the free and uninterrupted enjoyment of public use of light, view and air over the area described in such agreement.

1.33 "Prohibited Uses" shall mean any use or operation which is inconsistent with the development or operation of the Project as a first class retail, commercial, entertainment, residential, office and/or community project, as so operated, as reasonably determined by Declarant. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce, are accompanied by or involve the following characteristics, which list is not intended to be all-inclusive:

- a. Any use which constitutes a public or private nuisance;
- b. Any use which produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness; provided, however, this restriction shall not preclude public performances (including concerts) in the "Plaza" area adjacent to the Hotel Building Parcel or other public uses permitted within the Plaza Easement area as set forth in the City Easement Agreement relating to same;
- c. Any use which produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to first class retail operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;
- d. Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);
- e. Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction shall not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Project;
- f. Any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation;
- g. Any mobile home or trailer court, mortuary, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first class pet stores shall be permitted within the Project;
- h. Any operation for drilling for and/or removal of subsurface substances;
- i. Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;
- j. Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital or similar use;

k. Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions; provided, however, the following shall be permitted within the Project: (i) the sale of such adult magazines and books as may be carried by a convenience, supermarket, drug, record or full-line book store, and (ii) the sale and/or rental of X-rated videos and similar productions from full-line record and/or video stores, provided such X-rated videos are not shown on screen in any such store, but are kept behind a counter or in a reserved area and are not advertised or placed on display to minors;

l. Any automobile body and fender repair shop operation; and

m. Any off-track betting facility.

1.34 “Residential Building” shall mean any residential apartment building or condominium complex building located on a Residential Building Parcel and otherwise used in accordance with the terms and provisions of this Declaration applicable to the use of Residential Buildings, as more particularly set forth in Section 2.5 below. A “Residential Building” may be a physical portion of a Building that includes office space, retail space and/or parking facilities; in such event “Residential Building” refers only to the portion of the larger Building that is located on or within a Residential Building Parcel or a Residential Parking Parcel.

1.35 “Residential Building Parcels” shall mean the SCM Residential Unit in the Gateway Block C-1 Condominium Project and the SCM Residential Unit 1 and SCM Residential Unit 2 in the Gateway Block C-2 Condominium Project (which Condominium Projects shall be recorded in the Official Records of Salt Lake County after the recordation of this Declaration), upon which Residential Buildings are or will be located. A “Residential Building Parcel” shall mean any of such Parcels, individually.

1.36 “Residential Common Area” shall mean all the areas within the exterior boundaries of a Residential Building Parcel and Residential Parking Parcel which are made available for the general use, convenience and benefit of all Permittees of a Residential Building Parcel (or other Parcels) and/or the public. Without limitation, Residential Common Area shall include the following areas within the exterior boundaries of a Residential Parcel: (i) all parking areas, including underground parking facilities located within a Residential Parking Parcel (each a “Residential Parking Facility”); (ii) all roadways and driveways leading from public streets to a Residential Parking Facility; (iii) all sidewalks and walkways; and (iv) all landscaped and planted areas, except those located around the perimeter of the Project (which such areas shall be included generally in “Common Area” of the Project).

1.37 “Residential Parking Parcels” shall mean the Parking Unit in the Gateway Block C-1 Condominium Project and the Parking Unit 1, Parking Unit 2, Parking Unit 3, Parking Unit 4, Parking Unit 6 and Parking Unit 7 in the Gateway Block C-2 Condominium Project (which Condominium Projects shall be recorded in the Official Records of Salt Lake County after the recordation of this Declaration), upon which parking facilities for use in connection with the Residential Building Parcels are or will be located. Notwithstanding anything to the contrary contained in this Declaration, the Residential Parking Parcels shall be used exclusively

for vehicular parking and uses incidental thereto. A "Residential Parking Parcel" shall mean any of such Parcels, individually.

1.38 "Restored Union Pacific Depot Building" shall mean that certain Building, designated as an historical landmark by the City of Salt Lake City, Utah, and labeled as "Restored Union Pacific Depot Building".

1.39 "Restrictions" shall mean those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Declaration.

1.40 "Retail Building" shall mean any building located on a Retail Building Parcels, used primarily for retail selling, service commercial (as described in Section 2.7 below), restaurant, theatre, and/or other commercial purposes and/or otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Retail Buildings, as more particularly set forth in Section 2.7 below. A "Retail Building" may be a physical portion of a Building that includes office space, retail space and/or parking facilities; in such event "Retail Building" refers only to the portion of the larger Building that is located on or within a Retail Building Parcel or a Retail Parking Parcel.

1.41 "Retail Building Parcels" shall mean the Retail Unit in the Gateway Block C-1 Condominium Project and the Retail Unit in the Gateway Block C-2 Condominium Project (which Condominium Projects shall be recorded in the Official Records of Salt Lake County after the recordation of this Declaration), together with certain additional Parcels which shall be designated as "Retail Building Parcels" by the Developer at any time and from time to time pursuant to Section 9.3, upon which Retail Buildings are or will be located. A "Retail Building Parcel" shall mean any of such Parcels, individually.

1.42 "Retail Parking Parcels" shall mean the Retail Parking Unit 2 in the Gateway Block C-2 Condominium Project (which Condominium Project shall be recorded in the Official Records of Salt Lake County after the recordation of this Declaration) together with certain Parcels to be designated as "Retail Parking Parcels" by Developer at any time and from time to time pursuant to Section 9.3, upon which parking facilities for use in connection with Retail Building Parcels, Office Building Parcels or Hotel Building Parcels are or will be located. A "Retail Parking Parcel" shall mean any of such Parcels, individually.

1.43 "Rio Grande Street Easement" shall mean that certain easement described in that certain Rio Grande Street Grant of Easement agreement between Declarant and the Agency dated January 13, 2000 and recorded in the office of the County Recorder, Salt Lake County, Utah on January 13, 2000 as Entry Number 7553963, in Book 8336, at Page 1217, providing for, among other things, public use, including pedestrian and vehicular traffic, of the area described in such agreement.

## ARTICLE 2

### USE IN GENERAL

2.1 Lawful Use. Except as otherwise limited pursuant to this Declaration, the Project may be used for any lawful retail, commercial, entertainment, office, cultural and/or community, purpose not specifically prohibited herein. No portion of the Project shall be used for a Prohibited Use.

2.2 Use of Hotel Building Parcel. The Hotel Building Parcel shall be used only for first class hotel purposes, and ancillary administrative office and meeting/ballroom purposes. In addition, the ground floor level of any Hotel Building, may be used, on an incidental basis, for retail and restaurant uses (as limited pursuant to the further provisions of this Section below) comparable to those typically operated at other first class hotel facilities in Salt Lake City, Utah. Notwithstanding anything herein to the contrary, retail uses operated in a Hotel Building shall be limited to the operation of newstands, gift shops and shops primarily selling sundry items. The Hotel Building shall contain not more than one (1) sit-down, full service restaurant and one (1) coffee shop or quick service restaurant. The Hotel Building Parcel shall be used for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld; provided, however, Declarant shall have the right, in its sole discretion, to refuse to consent to a change in use of the Hotel Building Parcel to a primarily retail, commercial, permanent residential, industrial, primarily office or entertainment use or any other use which is inconsistent with the zoning for the Hotel Building Parcel. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, all window treatments utilized on the Hotel Building Parcel shall be subject to the prior approval of Declarant, in order to maintain aesthetic harmony within the Project. In addition, any and all balcony areas located on the Hotel Building Parcel shall be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.3 Use of Hotel Parking Parcel. The Hotel Parking Parcel shall be used only for the operation of the Hotel Parking Facility (and uses incidental thereto) and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld. Notwithstanding anything in this Declaration to the contrary, the Hotel Parking Facility may be subject to the exclusive use of patrons, occupants and users of the Hotel Building Parcel.

2.4 Use of Office Building Parcels. The Office Building Parcels shall be used only for first class office purposes; provided, however, the main floor level (meaning the level on which the main building lobby through which pedestrian access to the remainder of the Project is located) of any Office Building may be used, on an incidental basis, for retail uses typical in other first class office buildings in Salt Lake City such as (but not limited to) newstand, gift shop, sundry and/or coffee shop (it being understood that no Office Building shall contain more than one (1) coffee shop). The Office Building Parcels shall be used for no other purposes without the prior written consent of Declarant, which shall not be unreasonably withheld; provided, however, Declarant shall have the right, in its sole discretion, to refuse to consent to a change in use of any Office Building Parcel to a retail, commercial, residential, industrial or

entertainment use or any other use which is inconsistent with the zoning for the Office Parcels. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, each Owner of an Office Building Parcel shall cause the tenants, occupants and users of its respective Office Buildings to utilize only those window treatments approved by Declarant for use in the Project, it being the intent of Declarant that all Office Building Parcels located within the Project use substantially the same interior window treatments for aesthetic harmony. In addition, any and all balcony areas located within an Office Building Parcel shall be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.5 Use of Residential Building Parcels. The Residential Building Parcels shall be used only for multi-family apartment and condominium purposes and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld; provided, however, Declarant shall have the right, in its sole discretion, to refuse to consent to a change in use of any Residential Building Parcel to a retail, commercial, office, industrial or entertainment use or any other use which is inconsistent with the zoning for the Residential Building Parcels. No business operation shall be performed or carried out on any Residential Building Parcel without the prior written consent of Declarant, which consent may be withheld in Declarant's sole but good faith discretion; provided, however this restriction shall not prohibit the incidental use of individual residential units on Residential Building Parcels for the operation of home offices or businesses so long as any such offices and businesses are not open or available to the general public. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, each Owner of a Residential Building Parcel shall cause the tenants, occupants and users of its respective Residential Buildings to utilize only those window treatments approved by Declarant for use in the Project, it being the intent of Declarant that all Residential Building Parcels located within the Project use substantially the same interior window treatments for aesthetic harmony. In addition, any and all balcony areas located within a Residential Building Parcel shall be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.6 Use of Residential Parking Parcels. The Residential Parking Parcels shall be used only for the operation of the Residential Parking Facilities (and uses incidental thereto) and for no other use without the prior written consent of Declarant, which shall not be unreasonably withheld. Notwithstanding anything in this Declaration to the contrary, the Residential Parking Facilities may be subject to the exclusive use of patrons, occupants and users of the Residential Buildings to which they correspond.

2.7 Use of Retail Building Parcels. The Retail Building Parcels shall be used for any retail (including entertainment and restaurant), service commercial (meaning banking, travel agency, real estate, escrow, insurance tax preparation and similar types of office uses) and any other purposes permitted under applicable zoning and other laws and not otherwise prohibited under this Declaration.

2.8 Use of Retail Parking Parcels. The Retail Parking Parcels shall be used only for the operation of Retail Parking Facilities (and uses incidental thereto) and for no other



use without the prior written consent of Declarant, which shall not be unreasonably withheld. The Retail Parking Facilities shall be available for use by all Permittees of the Project, on a non-exclusive (except as may otherwise be permitted pursuant to this Declaration) basis (subject to the other provisions of this Declaration, including Section 4.5 below and the "Parking Guidelines" referenced therein).

2.9 Zoning. This Declaration shall be subject to applicable zoning laws.

### ARTICLE 3

#### CONSTRUCTION

3.1 Buildings and Improvements Only in Designated Areas. No Building or other structure of any kind (including parking facilities) shall be erected, placed or maintained on any portion of the Project except upon those portions designated by Declarant as Building Areas or areas for the location of such parking facilities. Notwithstanding anything to the contrary contained in this Declaration, following Declarant's prior approval, any areas used for surface parking may, pursuant to plans and specifications approved by Declarant, be demolished and replaced with a Building or other improvements in furtherance of the further development of the Project and the property adjacent thereto. In such event, any and all easements and other rights granted to Owners pursuant to this Declaration to use such area shall be deemed to be withdrawn, except to the extent of Common Areas remaining on such property following completion of construction thereon.

3.2 Initial Building Approval. No Owner shall commence or permit the commencement of construction of any sign, Building or other structure within the Project unless the design, architecture, exterior elevations, configuration, height, dimensions, landscape design, location, exterior finishes, materials, colors and other attributes thereof shall have first been approved in writing by the Declarant in its reasonable discretion, which such approval (if applicable) shall be in the form of approval of such Owner's detailed plans and specifications for such improvements which shall be submitted in advance to Declarant. All improvements shall be constructed in strict accordance with any such plans and specifications approved by Declarant. Notwithstanding anything in this Declaration to the contrary, and without limitation, it shall be reasonable for Declarant to withhold such approval if such improvements are not architecturally, functionally and/or aesthetically harmonious with the other Buildings and improvements then located or approved for construction within the Project. No Owner shall make any material alterations to any of the foregoing matters without first obtaining a similar approval from Declarant as to such alteration. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to establish standardized construction guidelines for the Project ("Construction Guidelines"), which such Construction Guidelines may, as determined by Declarant, include detailed design, engineering and specification requirements, construction rules and designated staging areas. Declarant shall have the right to change the Construction Guidelines from time to time, in Declarant's sole and absolute but good faith discretion. Any and all construction or other work performed by an Owner pursuant to this Declaration shall be subject to and performed in accordance with the Construction Guidelines.

3K84 1 0PG8327

3.3 Alteration Approval. In order to maintain the architectural and functional harmony of the Project, no Building or structure within the Project shall be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character or motif or functional purpose of such item, unless such alteration is first approved in writing by the Declarant in its reasonable discretion and such alteration is made in accordance with the Construction Guidelines, if any. Such approval shall be given or withheld in writing within thirty (30) days after receipt of written request and receipt by Declarant of detailed plans and specifications therefor. Failure to respond in writing to a written request for such approval within thirty (30) days of its receipt shall constitute disapproval of such construction, reconstruction or alteration. All alterations or improvements shall be constructed in strict accordance with the plans and specifications approved by Declarant and the Construction Guidelines (as applicable). No material deviation shall be made from such plans and specifications without Declarant's prior written approval.

3.4 Construction Procedures.

a. All construction activities within the Project shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Project.

b. All construction activities within the Parcels shall be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or part thereof or the business conducted by any other Owner or Permittees.

c. When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner shall establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas (i) shall not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business or permitted activity on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits), and (ii) shall be subject to the approval of Declarant, in its reasonable discretion or located in a permitted staging or storage area identified in the Construction Guidelines. If substantial work is to be performed, such Owner, at the request of Declarant or any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, shall fence off such staging and storage area. Upon completion of such work, such staging and storage area shall be restored to a condition at least equal to that existing prior to commencement of such work. Except in cases of emergency and except for restoration or repair necessitated by casualty or condemnation, no exterior

construction or material exterior maintenance and repair work shall be conducted within the Project during the months of July, August, November and/or December, unless otherwise approved by Declarant, in Declarant's sole and absolute discretion. Correspondingly, no staging and storage areas shall be established and maintained within the Project during such restricted months.

d. Each Owner shall diligently complete all construction activities within its Parcel as quickly as possible, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

e. Each Owner shall indemnify, defend and hold harmless each other Owner from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

#### ARTICLE 4

#### PROJECT EASEMENTS

4.1 Grant of Easements. The Declarant hereby establishes and grants to, and each other person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to all other Owners and all tenants, occupants of the Project, their guests, employees, invitees, permittees, licensees, patrons and customers, irrevocable, non-exclusive easements over, across, upon and beneath the Common Area held or owned by such Owner for the purposes set forth in Section 4.2, including, with respect to the Owners of the Retail Building and Parking Parcels, Office Building Parcels, Residential Building and Parking Parcels and Hotel Building and Parking Parcels, Office Common Area, Residential Common Area, Hotel Common Area and other Common Areas located respectively, on each such Parcel (except to the extent otherwise provided in this Declaration). Notwithstanding the foregoing or any other contrary provision in this Declaration, except as may otherwise be agreed by the Owners of the Residential Parking Parcels and Hotel Parking Parcel, the Residential Parking Facilities and the Hotel Parking Facility, respectively, shall be subject to the exclusive use of the patrons, occupants and users of the particular Buildings to which they relate. In addition, in Declarant's sole but good faith discretion, Declarant shall have the right to designate certain portions of the parking facilities located on the Retail Parking Parcels as "reserved" parking spaces for use by certain tenants or occupants of the Retail and/or Office Buildings; provided, however, in no event shall Declarant or Manager be responsible or in any way liable for the unauthorized use of such parking spaces. Nothing in this Section or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses. The Common Area shall be used for the purposes set forth in this Section. Notwithstanding anything to the contrary contained in this Declaration, any rights granted under this Declaration relating to portions of the Common Area covered by a City Easement Agreement, shall be subject to the terms and provisions set forth in the relevant City Easement Agreement. No Owner shall have any right to perform work within or affect an area which is the subject of a City Easement Agreement, unless (and then only to the extent) permitted under the relevant City Easement Agreement.

a. The parking of passenger vehicles and the pedestrian and vehicular traffic of Permittees.

b. The ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Area and the public streets adjacent to the Common Area.

c. The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, pipes, gutters and lines, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, power and emergency fire protection lines, and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Declarant. All Owners shall cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. The original location of the facilities set forth above shall be subject to the approval of the Declarant. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, each Owner does not unreasonably interfere with the use of the Common Area by Permittees and that no relocation or removal of any such facilities shall be made without the prior written consent of the Declarant.

d. Pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses and occupants located or to be located within the Project.

e. The construction, replacement and reconstruction of parking sites or stalls, flag poles, sidewalks, ramps (excluding loading ramps), driveways, lanes, curbs, directional and other signs, gutters, traffic control areas, traffic islands, traffic and parking lighting facilities, perimeter walls, pedestrian walkway or landscaped areas, including planters, planting boxes, edgers, fountains, valves and customer conveniences, such as mail boxes, public telephones and benches for the comfort and convenience of Permittees; provided, however, that the Declarant shall first approve of all such facilities and that such facilities do not materially affect the access, visibility or parking of the property or Building of any Owner.

f. The maintenance and repair of any of the items referred to in Section 4.2(e) above.

g. Recycling centers for cans, bottles or other materials.

h. The ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all persons or other entities who may lease portions of the Building Areas. Each tenant or other occupant of the Project shall use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Declarant. In the event it is necessary that deliveries be made other than in the areas designated by Declarant, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.

i. Trash, refuse and garbage container storage areas if indicated as Common Area and areas for the parking of the automobiles of employees of an Owner or occupant of any Building and other incidental and related facilities.

j. Subject to the prior written approval of Declarant, which will not be unreasonably withheld, the temporary use (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings, other improvements and appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

k. The construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs (with appropriate underground electrical connections in locations reasonably designated by Declarant); provided, however the location, construction, design and replacement of any such signage shall be subject to the prior written approval of Declarant (which approval may be given in Declarant's sole but good faith discretion). The costs of designing, constructing, maintaining, repairing, replacing or reconstructing sign pylons and/or monument signs which serve the Project shall be paid for pro rata by the Owners or occupants of the Buildings whose names or logos appear on such signs in the ratio of their square footage usage of such sign pylons. Participation on such signage shall be as determined by Declarant, in Declarant's sole and absolute discretion, or as set forth in the "Sign Program" (as hereinafter defined), if any, implemented pursuant to the following provisions of this Paragraph. No changes shall be made to such signage, including the locations of same, without the prior written approval of the Declarant. Notwithstanding anything to the contrary contained in this Declaration or elsewhere, Declarant shall have the right, in Declarant's sole discretion (using prudent business judgment) to install, erect and/or construct signage, including tenant, directional and informational signage, at locations reasonably designated by Declarant within and on the Retail Parking Parcels. Notwithstanding anything to the contrary contained herein, Declarant shall have the right to establish a sign program for the Project ("Sign Program"), which such Sign Program may, as determined by Declarant, include, among other things, detailed design, engineering and specification requirements relating to signage. Declarant

shall have the right to change the Sign Program from time to time, in Declarant's sole and absolute but good faith discretion. Any and all signage installed at the Project shall be subject to and erected in accordance with the Sign Program.

4.3 Common Area Alteration. No Owner or other person shall alter any parking areas or other improvements located upon the Common Area, without the prior written consent of the Declarant. Notwithstanding the foregoing: (i) an Owner (or the Manager or Declarant) shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2(c), so long as such excavation or construction activities shall be prosecuted diligently to completion; and further provided that the consent of the Owner on whose Parcel such activity is to take place shall also be obtained, which consent shall not be unreasonably withheld. The person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used; and (ii) Declarant may make alterations in the Common Area as it shall deem appropriate or necessary. Any work performed in the Project pursuant to this subparagraph shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project. Notwithstanding the foregoing, however, no such activity shall occur (unless otherwise approved by Declarant) during the months of July, August, November and December, except (i) in the event of an emergency or in connection with restoration or repairs necessitated by casualty or condemnation, or (ii) to the extent necessary to prevent a breach or default under this Declaration.

4.4 Encroachment Easement. Should any Building or improvement constructed within the Project inadvertently encroach on any adjacent property and said encroachment does not exceed twenty-four (24) inches and/or otherwise materially, adversely effect the use of the property being encroached upon, the Owner of the adjacent property shall be deemed to have granted an easement effective as of the recording date hereof for such encroachment for so long as such encroachment shall exist, and shall execute such instruments as may reasonably be required by the encroaching party, or its assignees, title insurer or Mortgagees confirming such easement.

4.5 Parking. The Residential Parking Facilities shall be operated in a first class manner, in accordance with the customary standards for parking facilities in residential complexes similar to the Residential Buildings located within the vicinity of the Project. The Hotel Parking Facility shall be operated in a first class manner, in accordance with the customary standards for parking facilities in hotel projects similar to the Hotel Building located within the vicinity of the Project. Subject to the reasonable prior approval of Declarant, the Owners of the Residential Parking Parcels and Hotel Parking Parcel may establish reasonable parking programs and charge reasonable, competitive parking rates for the use of the Residential Parking Facilities and Hotel Parking Facility, respectively. As set forth in this Declaration above, and notwithstanding anything to the contrary contained herein, except to the extent otherwise agreed by an Owner of a Residential Parking Parcel and/or Hotel Parking Parcel, the respective

JK8410PG8332

Residential Parking Facilities and Hotel Parking Facility shall be available only for the exclusive use of patrons, occupants or other users of the Residential Buildings and Hotel Building to which they correspond. With respect to the remainder of the parking areas within the Common Area, Declarant shall have the right, in Declarant's sole and absolute discretion, to establish a parking program for the Project ("Parking Program"), which such Parking Program may, as determined by Declarant, provide for, among other things, parking rules and regulations, parking charges, valet and validation programs or systems, Declarant's authority for the reservation or designation of particular parking spaces and other items as Declarant shall determine in Declarant's sole and absolute but good faith discretion. Declarant shall have the right to change the Parking Program from time to time, in Declarant's sole and absolute but good faith discretion. Subject to the foregoing, Permittees shall not be prohibited or prevented from parking within the facilities located on the Retail Parking Parcels so long as space is available therein and so long as they do not violate the rules and regulations covering the use of such areas, promulgated from time to time by Declarant or Manager. No Permittee shall use or permit the use of the parking area portions of the Common Area for any purpose other than parking, loading/unloading (in the areas designated for same by Declarant or Manager) and passage of pedestrians and motor vehicles unless specifically provided otherwise in this Declaration. Each Owner agrees to use reasonable efforts to enforce the provisions hereof. Each Owner shall require its Permittees to park their vehicles only in the parking areas from time to time designated for that purpose by Declarant or Manager. Without limiting the generality of the foregoing, if Declarant or Manager implements any program related to parking, parking facilities or transportation facilities including, but not limited to, any program for off-site parking, parking validation, employee shuttle transportation during peak traffic periods or other program to limit, control, enhance, regulate or assist parking by customers or Permittees of the Project, each Owner shall participate in the program and pay its proportionate share of the costs of the program (based on the proportionate share of Floor Area owned by such Owner in the Project) under reasonable and nondiscriminatory rules and regulations from time to time established by Declarant or Manager.

4.6 Underground Supports. In order to accommodate the construction, reconstruction or repair of any Building or other improvement which may be constructed or reconstructed immediately adjacent to the common boundary lines of any of the Parcels, each Owner, as to its respective Parcel, hereby grants, establishes and creates for the benefit of, and as appurtenances to, each other Parcel and for the benefit of the Owner of each of the other Parcels from time to time and their respective Permittees, with respect to, and as a burden upon, such granting Owner's Parcel, non-exclusive easements for lateral support for improvements constructed on or near such common boundary lines, together with the right and easement to install, maintain, repair, and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing structure, provided that the location of such footings shall be subject to the consent and approval of the Owner of the Parcel encumbered by such easement, such approval not to be unreasonably withheld, and provided that such footings shall in no event extend more than five (5) feet onto the servient Parcel from the applicable common boundary line. This easement shall continue in effect for the term of this Declaration and thereafter so long as the improvements utilizing the easement exists, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Buildings or other

improvements located on the Parcel encumbered by such easement or the operation of business thereon. Each Owner of a Parcel using a common footing shall construct its wall upon its Parcel, and no load, force or pressure shall be exerted by the wall of one Owner upon the wall of the other Owner. When an Owner of a Parcel constructs its improvements along a common boundary line, it shall do so in a manner that does not result in damage or injury to the Buildings or other improvements previously placed by another Owner of a Parcel along such common boundary line. If a common footing is used by two (2) Owners, each shall assume and pay their reasonable share of the cost and expense of the initial construction and, so long as both Owners are benefiting therefrom, any subsequent maintenance, repair, and replacement thereof. In the event any Building or structure utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any improvements utilizing the same located on the adjoining Parcel. Nothing herein shall be deemed to require any Owner to use or to consent to the use of common subterranean construction elements, but if such consent is granted then the foregoing provisions of this Section shall apply.

## ARTICLE 5

### OPERATION AND MAINTENANCE OF BUILDING AREA AND COMMON AREA

#### 5.1 Taxes and Assessments.

a. Declarant shall have the right, in its sole and absolute discretion, to petition all applicable governmental authorities for the creation of separate tax parcels for the Project, resulting in separate assessments (which such assessments shall include an equitable division (as approved by Declarant, in Declarant's sole and absolute discretion) of any and all "Taxes" (as hereinafter defined) attributable to the Common Areas and other portions of the Project which do not contain Floor Area (including the Parcels containing Parking Facilities)) against only those Parcels within the Project which contain Floor Area. In the event Declarant obtains such separate assessments, all Owners shall pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Parcels. For purposes of this Declaration, "Taxes" shall mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any governmental authority upon the land within the Project and/or any improvements therein or thereon.

b. Notwithstanding anything to the contrary contained herein, in lieu of Owner's separately paying Taxes to the applicable taxing authority(ies) pursuant to Section 5.1(a) above, at Declarant's election, which election shall be made in Declarant's sole and absolute discretion, Declarant (or Manager, on behalf of at Declarant) shall collect from each Owner a share (as described below) of Taxes, after the actual amount of taxes and assessments are ascertained or in advance, monthly or quarterly, based upon estimates, plus an administrative fee equal to fifteen percent (15%) of all such Taxes. If Declarant or Manager collects from each Owner a share of Taxes based upon estimates, such share (as estimated by Declarant) shall be



paid by each such Owner on the first (1st) day of each month or quarter throughout the Term of this Declaration (as determined by Declarant). Declarant may periodically adjust the estimated amount. If the Taxes are collected based upon estimated amounts, then following the end of each calendar year, Manager shall furnish each Owner with a statement covering the year just expired showing the total Taxes for the Project for such year, the total Taxes payable by such Owner for such year, and the payments previously made by such Owner with respect to such year, as set forth above. If the actual Taxes payable for such year exceed such Owner's prior payments, such Owner shall pay to Manager the deficiency within ten (10) days after its receipt of the statement. If such Owner's payments exceed the actual Taxes payable for that year, such Owner shall be entitled to offset the excess against the next payment(s) of Taxes that become due under this Declaration. Notwithstanding anything to the contrary contained herein, an Owner's share of Taxes shall be determined by multiplying all of the Taxes attributable to the Project by a fraction, the numerator of which shall be the Floor Area contained on such Owner's Parcel and the denominator of which is the number of square feet of Floor Area in the Project from time to time.

c. If any Owner shall fail to pay its share of Taxes prior to delinquency, any other Owner or the tenant of any other Owner may pay such Taxes and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within thirty (30) days, the curing Owner or tenant shall have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount shall bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by such Owner or tenant as provided in Article 7 below.

d. Notwithstanding the foregoing or any other contrary provision herein, no Taxes attributable to the Restored Union Pacific Depot Building (except the portions which are designated by the Owner thereof for retail, commercial and/or office use) and/or any Cultural Building Space shall be paid by the Owner's of such premises, but rather the Taxes attributable to same shall be paid by the other Owners in accordance with their obligations pursuant to the other agreements which are a matter of record affecting the Project.

e. With the consent of the Declarant, which consent may be withheld in the Declarant's sole and absolute discretion, an Owner (or the tenant or occupant of an Owner if such tenant or occupant has the right under its lease or occupancy agreement to contest Taxes) shall have the right, in good faith, to contest the amount of Taxes owing with respect to its property; provided that such Owner (or tenant or occupant) shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within the Project, including, immediately following the request of Declarant, recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

5.2 Building and Improvement Maintenance. Except as may otherwise be provided pursuant to other matters of record affecting the Project (or portions thereof), each Owner shall maintain, or cause to be maintained, in a safe, clean, attractive and tenantable condition, all Buildings and other improvements located upon its Parcel or Parcels, including screening from view the garbage receptacle areas.

5.3 Utilities and Central Plant. Each Owner shall be solely responsible for obtaining and paying for all utilities and services required and used on its Parcel. Notwithstanding the foregoing, any such costs which are attributable to the Common Areas shall be paid by the various Owners in accordance with their obligations set forth in other matters of record affecting the Project, provided, however, all such costs attributable to the Residential Common Areas, Hotel Common Areas and Office Common Areas shall be paid by the Owner of the Parcel containing same. Notwithstanding the foregoing or any contrary provision in this Declaration, at Declarant's option, each Owner shall purchase utilities/utility services to the extent available from the Central Plant, if any, servicing the Project, in accordance with a standardized utility program ("Utility Program"), established in good faith by Declarant for the Project, and providing for such utilities/utility services to be made available at competitive rates. Declarant shall have the right to make changes to the Utility Program from time to time, in Declarant's sole and absolute but good faith discretion.

5.4 Rules and Regulations. The Declarant may promulgate reasonable rules and regulations of general application for the supervision, control and use of the Common Area, in which event, the Manager shall make and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly.

5.5 Maintenance of Residential Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, each Owner of a Residential Building Parcel shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Residential Common Areas located on its Residential Building Parcel and on any Residential Parking Parcel owned by such Owner (provided, however, to the extent the Residential Parking Parcel below a Residential Building is owned by a party different than the Owner of the corresponding Residential Building Parcel, then the Owner of such Residential Parking Parcel shall have the obligations set forth in this Section with respect to its Residential Parking Parcel) in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

- a. Resurfacing of walks, drives and parking areas;
- b. Keeping the surface of the Residential Common Areas within the subject Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;
- c. Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Residential Common Area drainage facilities and all other tasks necessary to maintain the Residential Common Areas of such Parcel in a clean, safe and orderly condition;
- d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

g. Security service, to the extent Declarant or Manager (without any liability therefor) reasonably deems the same to be necessary or advisable, and in all events at least to the extent required under the City Easement Agreements;

h. Illumination of the subject Residential Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the subject Residential Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.6 Maintenance of Office Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, each Owner of an Office Building Parcel shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Office Common Areas located on its Office Building Parcel in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

a. Resurfacing of walks, drives and parking areas;

b. Keeping the surface of the Office Common Areas within the subject Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;

c. Cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Office Common Area drainage facilities and all other tasks necessary to maintain the Office Common Areas of such Parcel in a clean, safe and orderly condition;

d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

g. Security service, to the extent Declarant or Manager (without any liability therefor) reasonably deems the same to be necessary or advisable, and in all events at least to the extent required under the City Easement Agreements;

h. Illumination of the subject Office Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the subject Office Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.7 Maintenance of Hotel Common Areas. Notwithstanding anything to the contrary contained in this Declaration or in any other matter of record entered into concurrently herewith, such Owner shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Hotel Common Areas located on its Hotel Building Parcel and on the Hotel Parking Parcel owned by such Owner (provided, however, to the extent the Hotel Parking Parcel is owned by a party different than the Owner of the Hotel Building Parcel, then the Owner of the Hotel Parking Parcel shall have the obligations set forth in this Section with respect to the Hotel Parking Parcel) in first class condition, all at such Owner's sole cost and expense. Such obligations shall include (but shall not be limited to) the following:

a. Resurfacing of walks, drives and parking areas;

b. Keeping the surface of the Hotel Common Areas within its Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall, in all respects, be equal in quality, use and durability;

c. Cleaning, sweeping, snow and debris removal, trash removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Hotel Common Area drainage facilities and all other tasks necessary to maintain the Hotel Common Areas in a clean, safe and orderly condition;

d. Maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

e. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as shall be reasonably required;

f. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

g. Security service, to the extent Declarant or Manager (without any liability therefor) reasonably deems the same to be necessary or advisable, and in all events at least to the extent required under the City Easement Agreements;

h. Illumination of the Hotel Common Areas until such time as the Manager or Declarant reasonably determines; and

i. Maintenance of all utility lines (including, without limitation, storm water drainage lines and facilities, and power and emergency fire protection lines) within the Hotel Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.8 Takeover of Maintenance. If an Owner of a Residential Building or Parking Parcel, Office Building Parcel or the Hotel Building or Parking Parcel shall fail to operate, manage, equip, light, repair, replace and/or maintain the Residential, Office or Hotel Common Areas, as the case may be, within its Parcel as required by Section 5.5, 5.6 or 5.7, as applicable, or otherwise fail to operate such Residential, Office or Hotel Common Areas, as the case may be (including any relevant parking facility located on its Parcel, as applicable) pursuant to the other requirements and standards set forth in this Declaration (including Section 4.5 above), then Manager or Declarant shall have the right (but not the obligation), by giving such Owner at least ninety (90) days' prior written notice, to assume, or cause to be assumed, responsibility for the operation, maintenance, repair and replacement of such Residential, Office or Hotel Common Areas (or portions thereof), as the case may be; provided, however, in the event such Owner performs such remedial actions or cures the relevant breach (or, if such remedial actions cannot be cured within such ninety (90) day period, such Owner promptly undertakes such remedial actions and diligently pursues such remedial actions to completion), Manager or Declarant (as the case may be) shall not have the right to take over, or cause to be taken over, the operation, maintenance, repair and replacement of the subject Common Areas on account of such breach. The ninety (90) day notice period described in the foregoing sentence shall not be applicable, and no notice shall be required if the Owner of a Parcel shall fail to maintain any part of the storm water drainage facilities or lines located on its Parcel or any of the power, fire emergency protection lines located on its Parcel); in any such event, Declarant or Manager may immediately enter the Parcel and commence any repairs or maintenance. If Manager or Declarant so exercises such option to assume, or causes to be assumed, the responsibilities for the operation, maintenance, repair and replacement of the relevant Residential, Office or Hotel Common Areas (or portions thereof), Manager, Declarant or a designee appointed by either such party, shall thereafter so operate, maintain, repair, replace and otherwise perform such Owner's obligations with respect to the subject Common Areas (or relevant portions thereof) in the same manner and subject to the same standards as required of such Owner under this Declaration. In such event, such Owner shall be responsible for any and all costs incurred by Manager, Declarant or such designee (as the case may be) with respect to such operation, maintenance, repair, replacement and satisfaction of other obligations of such Owner with respect to such Common Areas, which costs shall be paid by such Owner to Manager, Declarant or such designee (as the case may be) periodically, as billed by such party, within thirty (30) days following such billing. If such Owner shall not pay such bill within such thirty (30) days, then Manager or Declarant (as the case may be) shall have a lien on the property

of such Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

## ARTICLE 6

### INSURANCE

6.1 Liability Insurance. Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-/X, on all property within the Project owned or leased by such Owner and all Buildings and other improvements (including Common Area improvements) owned or leased by such Owner, a policy or policies of commercial general liability, bodily injury, personal injury and property damage liability insurance with combined single limits of at least Five Million Dollars (\$5,000,000) (which such limit shall be increased on January 1, 2005, and on every fifth (5<sup>th</sup>) anniversary of such date (each an "Adjustment Date") throughout the duration of this Declaration, by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which shall be the Index for the month which is three (3) months prior to the subject Adjustment Date and the denominator of which shall be the Index for the month which is sixty-three (63) months prior to such Adjustment Date)), in which all other Owners, the Manager, Declarant, any Mortgagee of Declarant and any property manager of Manager or Declarant shall be named as additional insureds, insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other improvements (including the Residential Common Areas and Parking Facilities, Office Common Areas and Hotel Common Areas and the Hotel Parking Facility, respectively) located on the property within the Project owned or leased by such Owner. Each Owner shall also maintain all-risk insurance coverage on all Buildings and improvements (excluding Common Area improvements, except as set forth below) located upon that portion of the Project leased or owned by such Owner including loss or damage by fire and such other risks as are from time to time included in the all-risk coverage insurance policies customarily issued in Utah in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements. In addition, and notwithstanding anything to the contrary contained herein, the Owner(s) of the Residential Common Areas shall maintain such all-risk insurance on such Residential Common Areas (exclusive of the Residential Parking Facilities), the Owner(s) of the Hotel Common Areas shall maintain such all-risk insurance on such Hotel Common Areas (exclusive of the Hotel Parking Facilities) and the Owner(s) of the Office Common Areas shall maintain such all-risk insurance on the Office Common Areas. Such all-risk insurance policies shall be maintained with good and solvent insurance companies authorized to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-/X. Manager and Declarant shall be named as loss payees on all such all-risk insurance policies. Notwithstanding the foregoing, such insurance obligations described in this Section as they relate to the Restored Union Pacific Depot Building (except the portions which are designated by the Owner thereof for retail, commercial and/or office use) shall not be paid by the Owner of such

premises, but rather the insurance relating to same shall constitute an expense related to the Common Areas to be allocated among the Owners as prescribed by this Declaration.

6.2 Certificates. Each Owner shall, upon request thereof from the Manager, Declarant or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. To the extent that the same shall not invalidate any insurance coverage obtained by an Owner, each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Article shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to Manager and Declarant.

If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then any other Owner or tenant of an Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the Owner(s) and/or tenant(s) giving the notice of default may do so and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within ten (10) days, then the curing Owner or tenant shall have a lien on the property of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.3 Indemnification. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned or leased by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its agents, servants, partners or employees.

## ARTICLE 7

### ASSESSMENT LIEN

7.1 Assessment Lien Procedure. In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration to any person is not paid when due and after expiration of any applicable grace period set forth herein, then the person to whom such sums are owing shall have the right to record, in the office of the County Recorder, Salt Lake County, Utah, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien. In the event the amount secured by such Assessment Lien is not paid in full within thirty (30) days after such Notice of Assessment Lien has been recorded, the person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, such person shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under its lease or under applicable law):

- a. Bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;
- b. Foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing applicable law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or
- c. Pursuing any other remedy at law or in equity.

7.2 Personal Obligation. Each assessment or amount due pursuant to any provision of this Declaration by an Owner, together with interest at the Default Rate, costs and attorneys' fees, shall be the personal obligation of such defaulting Owner, but such personal obligation of such Owner shall not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the property of such Owner within the Project, regardless of a subsequent conveyance of that property. No Owner shall escape liability for payment of any amount due hereunder which fell due while he was the Owner by nonuse of the Common Area or by transfer or abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded, pursuant to Section 7.1 above, is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

7.3 Priority. The Assessment Lien provided for above shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be



imposed upon any portion of the Project; provided, however, that such Assessment Lien shall be subject and subordinate to:

a. Liens for taxes and other public charges which by applicable law are expressly made superior;

b. Any Mortgages recorded in the office of the County Recorder, Salt Lake County, Utah (and such other place as may be required or permitted by law), prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Liens shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and

c. The rights of any and all tenants occupying any portion of the Project under written leases.

In the event an Owner shall be delinquent in paying any amounts due hereunder and, as a result thereof, a Notice of Assessment Lien shall be recorded as provided herein, the person recording such Notice of Assessment Lien may record subsequent Notices of Assessment Lien as to any amounts owing by such Owner to such person which become delinquent after the recordation of the first such Notice of Assessment Lien, and the priority of the Assessment Lien as to any such amounts thereafter becoming delinquent shall be fixed as of the date of recordation of the first such Notice of Assessment Lien. A person may prosecute a single Assessment Lien foreclosure action as to amounts delinquent at the time a Notice of Assessment Lien is recorded and as to amounts thereafter becoming delinquent, up to and including the time a final judgment is rendered in such action.

7.4 Cure. Upon the curing of any default for which a Notice of Assessment Lien was recorded, the person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such person, to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees, as such person shall have incurred.

7.5 Contest. Any provision contained herein to the contrary notwithstanding, any Owner shall have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the property within the Project owned or leased by such Owner on the basis that the recordation of such Notice of Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Declaration. The prevailing party in such action shall be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with such action.

3K8410PG8343

## ARTICLE 8

### CASUALTY

8.1 Damage to Buildings and Other Improvements. In the event any Building or other improvement (including Hotel Common Area improvements (exclusive of the Hotel Parking Facilities), Residential Common Area improvements (exclusive of the Residential Parking Facilities) and Office Common Area improvements, but excluding other Common Area improvements, which improvements (together with the Hotel and Residential Parking Facilities) shall be governed by the immediately succeeding Section) on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located shall promptly (i) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Declaration, or (ii) remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon.

8.2 Damage to Common Areas and Parking Facilities. Upon any damage or destruction to the Common Area on a Parcel (exclusive of the Hotel Common Area improvements (but including the Hotel Parking Facilities), Residential Common Area improvements (but including the Residential Parking Facilities) and Office Common Area improvements, which such Common Area improvements shall be governed by Section 8.1 above) during the term of this Declaration, Declarant shall have the right, at Declarant's sole election (which election shall be made in writing and delivered to each Owner within sixty (60) days following the subject casualty), to restore, repair or rebuild such damaged or destroyed Common Area (or any portion thereof). Notwithstanding anything to the contrary contained herein, in the event Declarant does not elect to so restore, repair or rebuild such damaged or destroyed Common Area, then (i) if such damage or destruction results from any cause insured under an all-risk insurance policy maintained by Manager or Declarant or the subject Owner, or (ii) if not so insured, the cost of repair of which (including applicable governmental fees and exactions) does not exceed twenty percent (20%) of the then full replacement cost of all of the Common Area on such Parcel, the Owner upon whose Parcel such damage or destruction occurred, at its sole cost and expense, shall promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Area. Notwithstanding the foregoing or any other contrary provision in this Declaration, in the event an Owner other than Declarant restores, repairs or rebuilds the damaged or destroyed Common Areas, Declarant shall assign to such Owner any insurance proceeds actually received by Declarant on account of such damage, and such proceeds shall be disbursed periodically to such Owner as such restoration, repair and/or rebuilding work progresses, in a manner reasonably determined by Declarant. If the cost of repair under clause (ii) above exceeds twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel and the Owner of the affected Parcel elects (which such election shall be made, if at all, within thirty (30) days following such damage or destruction) not to restore, repair or rebuild the damaged or destroyed Common Area, and if the damaged or destroyed Common Area includes or affects any entrances to the Project, accessways within the Project, or common utilities or signs, then any other Owner shall have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of

such damaged or destroyed Common Area, in which event the electing Owner or Owners shall effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Declaration, and the Owner of the Parcel upon which such damage and destruction occurred shall bear the first of the costs incurred to restore, repair and rebuild the affected Common Area to the extent not in excess of twenty percent (20%) of the then full replacement cost of all of the Common Area on the subject Parcel and the electing Owner or Owners shall bear all such costs exceeding twenty percent (20%) of the then full replacement cost of such Common Area. If an affected Owner is not obligated to repair damaged or destroyed Common Area pursuant to clause (ii) above, and no other Owner elects to effect such repair within thirty (30) days after the date the affected Owner determines not to proceed with such repairs, then the affected Owner shall promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Area, the plans or specifications for such work shall be subject to the prior written approval of Declarant as otherwise required pursuant to this Declaration. Each affected Owner shall use all due diligence to complete such restoration and repair of the Common Area as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit.

## ARTICLE 9

### GENERAL PROVISIONS

9.1 Successors and Assigns. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Project and shall be a burden thereon, for the benefit of all portions of the Project, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant, Manager, Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale.

9.2 Run With the Land. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon each and all of the parties (and upon all persons claiming under them) for a period of ninety-nine (99) years, and shall thereafter renew automatically for successive ten (10) year periods, unless Declarant (if Declarant is still Gateway Associates, Ltd.) otherwise elects in a writing recorded with the County Recorder, Salt Lake County, Utah, and if Declarant is any party other than Gateway Associates, Ltd., unless Owner's owning at least fifty-one percent (51%) of the land area within the Project otherwise elect in a writing recorded with the County Recorder, Salt Lake County, Utah.

9.3 Modification.

a. This Declaration may be modified in any respect whatsoever with the consent of the Declarant and without the necessity of obtaining the consent of any other Owner; provided, however if such a modification:

(i) directly and materially affects the access to, visibility of or parking on a Parcel; or

(ii) would result in a material increase in financial obligations for an Owner;

then the Owner of any such affected Parcel must also consent to such modification.

b. If this Declaration is rescinded, all Owners of any portion of the Project must consent to such rescission.

c. Any modification or rescission of this Declaration shall be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the office of the County Recorder of Salt Lake County, Utah.

d. Without limiting the foregoing and notwithstanding any other provision of this Declaration, Declarant may modify this Declaration at any time or from time to time without the consent or agreement of any person including, without limitation, the Owner of any Residential Building Parcel or Residential Parking Parcel located on the Gateway C-1 Condominium Project or the Gateway C-2 Condominium Project to:

(i) Add additional tracts of real property to the Project on such terms and conditions as the Declarant, at its sole discretion, may determine.

(ii) Release any tracts of real property from the Project on which no building improvements are then located (or which are planned to be demolished), and thus from the terms, covenants and restrictions of this Declaration; and

(iii) Designate or redesignate any Parcel to be a Cultural Building Space, a Hotel Building Parcel, a Hotel Parking Parcel, an Office Building Parcel, a Residential Building Parcel, a Residential Parking Parcel, a Retail Building Parcel, or a Retail Parking Parcel.

9.4 No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

9.5 No Cancellation. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

9.6 Survival. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

9.7 No Merger. The ownership of the entire Project by the same party shall not effect the termination of this Declaration.

9.8 Mortgagee Protection. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants shall be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

9.9 Remedies. Any Owner, any tenant of any portion of the Project, the Declarant and/or the Manager may prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it, him or them from so doing and/or to recover damages from or on account of such violation. All costs and expenses of any such suit or proceedings, including attorneys' fees, as well as any judgment thereof, shall be assessed against the losing party and shall constitute a lien against the real property or the interest therein in the Project belonging to such party as provided in Article 7 above, which the prevailing party may foreclose in the manner provided in such Article 7. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

9.10 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

9.11 Condemnation. In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken shall be payable to the Owner of such Parcel and no claim thereon shall be made by any other Owner of any part of the Project; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim shall reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of the Project to be taken shall, unless otherwise directed by Declarant (in Declarant's sole and absolute discretion), properly repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner. Notwithstanding the foregoing, Declarant shall have the right, at Declarant's sole election (which election shall be made in writing and delivered to the subject Owner whose property was taken within sixty (60) days following the subject taking), to restore or repair affected Common Area improvements (or any portion thereof), in which event, the affected

Owner shall immediately assign or pay to Declarant any award received on account of the taken Common Area property or on account of the subject restoration or repair.

9.12 Captions. The captions heading the various Articles of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

9.13 Consent. Unless otherwise set forth herein, any approval or consent required or requested of the Declarant or Manager may be withheld in its sole and absolute discretion. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner, other than the Declarant or Manager, shall not be unreasonably withheld and shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner shall be deemed to have approved of, or consented to, the matter in question.

9.14 Assignment. Except as otherwise expressly set forth herein, no Owner shall have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within the Project (and any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing).

9.15 Notices. Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Declarant: Gateway Associates, Ltd.  
127 South 500 East, Suite 100  
Salt Lake City, Utah 84102-1906  
Attention: H. Roger Boyer

Manager: Gateway Associates, Ltd.  
127 South 500 East, Suite 100  
Salt Lake City, Utah 84102-1906  
Attention: H. Roger Boyer

To any other Owner: At such address as such Owner shall designate in writing to the Manager, or at such Owner's address in the Project if such Owner shall fail to designate in writing another address to the Manager.

The Manager shall make all addresses furnished by any Owner pursuant to this Section 9.15 available to any Owner, occupant or tenant of the Project who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to the Declarant and Manager in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

9.16 Estoppel Certificates. Each Owner shall deliver to any other Owner, without charge, within fifteen (15) days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s).

9.17 Subdivision. Declarant shall have the right to subdivide any Parcel. Upon such subdivision, each portion of such subdivided Parcel shall be a separate Parcel. No other Owner shall have the right to subdivide any Parcel.

9.18 Jurisdiction. Any matter arising between the Owners shall be governed by and determined in accordance with the laws of the State of Utah.

9.19 Other Agreements. Nothing contained in this Declaration shall be construed as a limitation on Declarant's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to Declarant or otherwise different than those contained herein; provided, however, in all events, any such agreement shall be subordinate to this Declaration.

9.20 Non-Discrimination. There shall be no discrimination against or segregation of any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land of the Parcels, nor shall the transferee of any interest in the Parcels or any person claiming under or through such transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land of the Parcels.

9.21 Declarant. So long as Gateway Associates, Ltd., a Utah limited partnership, or an entity or Person controlling, controlled by or under common control with The Boyer Company, L.C., a Utah limited liability company (a "Boyer Affiliate"), owns any Parcel within the Project, Gateway Associates, Ltd., a Utah limited liability company (or, in the absence of such entity, a Boyer Affiliate (if such party owns a Parcel)) shall be the "Declarant" for purposes of this Declaration, unless otherwise elected. At any such time that Gateway Associates, Ltd. (or a Boyer Affiliate) no longer owns a Parcel within the Project or otherwise elects to no longer be the Declarant hereunder, the Owner of all of the Retail Building Parcels

shall be the "Declarant" for purposes of this Declaration, unless otherwise elected. At any such time that Gateway Associates, Ltd. (or a Boyer Affiliate) no longer owns a Parcel within the Project or otherwise elects to no longer be the Declarant hereunder, or there is no single Owner of all of the Retail Building Parcels, Owner's owning a majority of the Floor Area of the Retail Building Parcels shall then elect another Owner to be the Declarant hereunder. At any such time that Gateway Associates, Ltd. (or a Boyer Affiliate) no longer owns a Parcel within the Project or otherwise elects to no longer be the Declarant hereunder, or the Owner of all of the Retail Building Parcels elects to no longer be the Declarant hereunder, Owner's owning a majority of the buildable area (meaning the area upon which may be built Buildings, parking areas or other improvements) of the Project shall then elect another Owner to be the Declarant hereunder. Notwithstanding anything herein to the contrary, at any such time that the subject Owners are unable to elect a Declarant pursuant to the foregoing provisions, or the elected Declarant elects to no longer be the Declarant hereunder and another Declarant is not appointed pursuant to the foregoing provisions, then the Owner of the Retail Building Parcels shall be the Declarant hereunder. If more than one person owns the Retail Building Parcels, each such Owner shall constitute Declarant.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

GATEWAY ASSOCIATES, LTD., a Utah limited partnership, by its general partner:

BOYER GATEWAY, L.C., a Utah limited liability company, by its Manager:

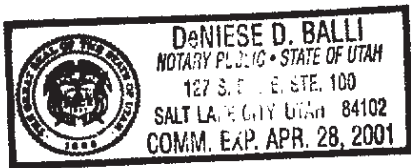
THE BOYER COMPANY, L.C., a Utah limited liability company

By:   
H. Roger Boyer, Chairman and Manager



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

On the 15<sup>th</sup> day of 2000 December, 2000, personally appeared before me H. Roger Boyer, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Manager of The Boyer Company, L.C., which is the manager of Boyer Gateway, L.C., which is the general partner of Gateway Associates, Ltd., and that said document was signed by him in behalf of said entities.



*Denise D. Balli*  
NOTARY PUBLIC  
Residing at Salt Lake County

My Commission Expires:  
4-28-01

## Exhibit "A"

### Legal Description

The Gateway Minor Plat, Parcels 1 and 2, which are more particularly described as follows:

#### THE GATEWAY MINOR PLAT PARCEL 1:

BEGINNING at a point South 11.71 feet and West 1.35 feet from the Southeast corner of Lot 1, Block 80, Plat "A", Salt Lake City Survey, and running thence North 90°00'00" West 600.25 feet; thence North 00°00'00" East 1514.92 feet; thence North 89°59'06" East 12.00 feet; thence North 00°00'00" East 80.00 feet to the South line of Block 98, Plat "A", Salt Lake City Survey; thence along said Block line North 89°59'06" East 422.35 feet; thence South 00°00'12" West 142.21 feet; thence South 00°00'44" East 344.00 feet; thence North 89°58'47" East 165.83 feet; thence South 00°00'00" West 1108.89 feet to the point of BEGINNING.

#### THE GATEWAY MINOR PLAT PARCEL 2:

BEGINNING at the Southeast corner of Lot 1, Block 65, Plat "A", Salt Lake City Survey, and running thence South 89°58'15" West along the South Block line 402.13 feet; thence North 00°01'01" West 100.48 feet; thence North 90°00'00" West 27.03 feet; thence North 00°00'36" West 64.55 feet to the Southeast corner of the Utah Power And Light Company property; thence along the East line of said tract North 00°00'36" West 165.04 feet; thence along the North line of said tract South 89°58'20" West 171.24 feet; thence North 00°00'00" East 345.05 feet; thence South 90°00'00" East 600.27 feet; thence South 00°01'01" East 674.83 feet to the point of BEGINNING.

#### FOR REFERENCE PURPOSES ONLY

Tax Parcel / Sidwell Numbers:

15-01-176-013

15-01-176-015

15-01-177-001

15-01-126-005

15-01-126-008