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DECLARATION OF  
EASEMENTS, COVENANTS AND RESTRICTIONS

for

HIGHLAND MARKETPLACE

Dated as of MAY 22, 2007

TABLE OF CONTENTS

Paragraph 1. Definitions ..... 1

Paragraph 2. Improvements ..... 4

Paragraph 3. Common Area Easements ..... 6

Paragraph 4. Manager’s Duties Regarding Common Area ..... 7

Paragraph 5. Common Expenses ..... 9

Paragraph 6. Taxes ..... 11

Paragraph 7. Insurance ..... 11

Paragraph 8. Indemnification ..... 12

Paragraph 9. Prohibited Uses ..... 12

Paragraph 10. Title and Mortgage Protection ..... 13

Paragraph 11. Mortgagee Protection ..... 13

Paragraph 12. Covenants to Run With Land ..... 15

Paragraph 13. Amendment ..... 15

Paragraph 14. Attorneys’ Fees ..... 16

Paragraph 15. Release on Transfer ..... 16

Paragraph 16. No Merger ..... 16

Paragraph 17. Force Majeure ..... 16

Paragraph 18. Certain Agreements ..... 17

Paragraph 19. Effective Dates and Duration ..... 17

Paragraph 20. Notices ..... 17

Paragraph 21. Highland City ..... 17

Paragraph 22. General Provisions ..... 17

DECLARATION OF  
EASEMENTS, COVENANTS AND RESTRICTIONS  
[Highland Marketplace]

THIS DECLARATION (this "Declaration") is entered into as of the 22 day of MAY, 2007, among (i) SOLANA BEACH HOLDINGS, L.C., a Utah limited liability company ("Declarant"), whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115, (ii) HIGH NOON, L.C., a Utah limited liability company ("High Noon"), whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115, and (iii) HIGHLAND MARKETPLACE, L.C., a Utah limited liability company ("Highland"), whose address is 515 West Pickett Circle, Suite 400, Salt Lake City, Utah 84115. (Declarant, High Noon and Highland are referred to in this Declaration collectively as the "Parties.")

IN CONSIDERATION of the mutual benefits to be derived from this Declaration, the Parties agree as follows:

1. Definitions. As used in this Declaration, each of the following terms shall have the meaning indicated:

1.1. "Buildings" means all buildings located in the Development at any time that are intended for permanent use or occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and all areas used exclusively by the occupants of such buildings, including, without limitation, drive-through areas, trash enclosures, playgrounds and platforms, ramps, docks and signage affixed to the outside of such buildings (but excluding any trellis located on more than one Lot). "Building" means any of the Buildings.

1.2. "Common Area" means the Common Utility Facilities, the Landscaping, the Vehicular and Pedestrian Areas, any signage advertising the Development as a whole or more than one business in the Development, any trash enclosure used by more than one Building and all other parts of the Development, except for those parts on which Buildings are constructed or located on or after the date of this Declaration. All portions of the Common Area shall initially be improved and developed in accordance with Paragraph 2 by the Owner of the Lot on which such portions are located and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4.

1.3. "Common Expense Percentage" for any Lot on which there is located one or more Completed Buildings is calculated as follows: (a) divide the acreage of the Lot concerned by the total acreage of all Lots on which there is located one or more Completed Buildings; (b) multiply the resulting quotient by 100 and round to the third (3<sup>rd</sup>) decimal place; and (c) express the resulting product as a percentage. The Common Expense Percentages of the Lots shall be adjusted from time to time by written notice given by the Manager to each Owner as of the date on which one or more Completed Buildings are located on any Lot. The Common Expense Percentage of any Lot on which there is no Completed Building shall be zero.

1.4. “Common Expenses” means the following:

(a) reasonable costs, expenses, fees, charges and other amounts (including appropriate reasonable reserves) paid or incurred by the Manager in connection with the improvement (excluding the initial improvement and development), operation, management, maintenance and repair of the Common Area and the performance of the Manager’s duties and rights under Paragraphs 4 or 5 or any other provision of this Declaration, including, without limitation, all reasonable costs, expenses, fees and other amounts (including, without limitation, those that are properly capitalized under generally accepted accounting principles) relating to utilities, cleaning, sweeping, ice, snow and rubbish removal, landscaping, resurfacing, re-striping, replacing damaged or worn-out Improvements (including lighting) located on the Common Area, insurance, licenses and permits, supplies, traffic regulation and control, fire, police protection and other security services, personnel (other than managerial personnel) necessary to perform any of the foregoing and depreciation allowance on any machinery or equipment owned by the Manager and used exclusively in connection with such matters;

(b) any assessment for public improvements levied against the entire Development rather than against individual Lots;

(c) managerial, clerical and overhead costs, expenses, fees and other amounts, all of which shall be deemed to be equal to fifteen percent (15%) of the total of all other Common Expenses; and

(d) Common Expenses due but not paid to the Manager, which are determined by the Manager not to be legally or practicably recoverable after the Manager has exercised its best reasonable efforts to collect the same from the responsible Owner and has determined that all reasonable remedies for collection have been exhausted, including the filing and enforcement of the lien described in Paragraph 5.4, if appropriate, together with all interest on, and costs and attorneys’ fees incurred in connection with, such unpaid Common Expenses; provided, however, that if such unpaid Common Expenses are later received by the Manager from or on behalf of the responsible Owner, any amounts previously paid by any other Owners pursuant to the preceding portion of this sentence shall be refunded pro rata to such other Owners.

1.5. “Common Expense Share” means the product obtained by multiplying the Common Expenses for the relevant period by the Common Expense Percentage for the Lot concerned.

1.6. “Common Utility Facilities” means all pipes, lines, wires, conduits and related facilities and improvements for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water that are intended, designed or used for the benefit of the Common Area or more than one Lot. The Common Utility Facilities shall be used for the purposes set forth in Paragraph 3.2 and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4.

1.7. “Completed Building” means a Building as of the date either of the following has first occurred: (a) a certificate of occupancy has first been issued for all or a portion of such Building by the appropriate governmental authority; or (b) all or a portion of such Building is first used or occupied.

1.8. “Development” means the Lots and any real property defined as an additional part of the Development in any amendment to this Declaration executed and recorded pursuant to Paragraph 13, together with all Improvements located on the Lots or such additional real property.

1.9. “Development Guidelines” means the standards, requirements and restrictions that may be adopted from time to time by the Manager pursuant to Paragraph 2.5.

1.10. “Improvements” means all Buildings, Common Utility Facilities, Landscaping, parking areas, roads, driveways, walkways, curbs, gutters, medians, flower boxes, sidewalks, trails, exterior lighting, fences, walls, signs, utility systems and facilities, trash enclosures and other improvements located on the realty concerned. “Improvement” means any of the Improvements.

1.11. “Landscaping” means all outdoor areas in the Development landscaped with lawn, flowers, ground cover, shrubbery, trees, ponds, fountains, gardens, berms or similar improvements.

1.12. “Lots” means the Lots of land located in Utah County, Utah, described as follows:

Lots 1 through 11, inclusive, HIGHLAND MARKETPLACE SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder.

together with all Improvements on such land, and any real property defined as an additional Lot or as an additional part of any Lot in an amendment to this Declaration executed and recorded pursuant to Paragraph 13. “Lot” means any of the Lots.

1.13. “Majority of the Owners” means the Owners holding a majority of the aggregate Common Expense Percentages.

1.14. “Manager” means Declarant, unless and until the date on which Declarant transfers all of its interest as an Owner in all portions of the Development, on which date the Manager shall automatically become and remain the Lot 1 Owner (whoever such Owner may be from time to time), unless another Owner is designated in a writing executed and recorded by Declarant. The Manager’s rights and duties under this Declaration may be assigned at any time to any other Owner or to an owners’ association that may be formed by the Manager at any time, in the Manager’s sole discretion, for the purpose of performing the Manager’s functions under this Declaration. If the Manager forms such an owners’ association, the voting interests in such

association shall be held pro rata by the Owners based on their respective Common Expense Percentages. Notice of any such assignment shall be recorded in the Official Records and shall, pursuant to Paragraph 13, be effective as an amendment to this Declaration, with no signature other than the signature of the existing Manager and the new Manager being required. For the period during which the Manager is an Owner other than Declarant (and not an owners' association), the rights and duties of the Manager under this Declaration shall be an appurtenance to the Lot owned by such Owner and shall run with such Lot unless and until assigned in accordance with the foregoing portion of this Paragraph.

1.15. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

1.16. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.17. "Official Records" means the official records of the Utah County, Utah Recorder.

1.18. "Owner" means the fee owner of record in the Official Records of the Lot concerned. If any Lot has more than one Owner, the liability of each such Owner under this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.19. "Qualified Mortgagee" means a Mortgagee of which Manager and each Owner have been given written notice, including such Mortgagee's name and address.

1.20. "Taxes" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public or quasi-public authority on or against the realty concerned.

1.21. "Vehicular and Pedestrian Areas" means all areas located in the Development at the time concerned that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways, sidewalks, trails and paths, but excluding any platforms, ramps and docks comprising a portion of the exterior of any Buildings.

## 2. Improvements.

2.1. Manager Approval. Except for maintenance and repair of the Common Area done by the Manager in accordance with this Declaration, no excavation, grading or similar work in the Development shall be commenced, no Improvement in the Development shall be constructed or installed, and no alteration, refurbishing or repainting of the exterior of any Improvement shall be performed, unless and until complete plans (including, without limitation,

exterior elevations and exterior building materials, colors and signage) have first been submitted to, and approved in writing by, the Manager, such approval not to be unreasonably withheld. The Manager may (but is not obligated to) use a committee approach for such review. (Currently, a review committee is used by the Manager and is comprised of Thomas A. Hulbert and Bret B. Fox.) Such plan submission and approval requirements shall not apply to repairs or alterations of pre-existing Improvements that do not (a) affect the size or the external design or appearance, (b) change the permitted use, or (c) change the then-existing parking ratio. In determining whether to approve or disapprove plans submitted, the Manager shall use its reasonable, good faith judgment to assure that all Improvements are of good quality and sound construction, functionally harmonize with existing surroundings and Improvements and comply with the other requirements of this Declaration and the Development Guidelines. The Manager may, however, approve plans that entail a variance from such requirements so long as in the reasonable judgment of the Manager such variance is necessary or appropriate. The fact that Improvements comply with applicable zoning and other laws shall not necessarily mean that such Improvements will be permissible under this Declaration. Any plans submitted to the Manager shall be approved or disapproved by the Manager in writing within thirty (30) days after submission. If the Manager fails to take any action within such period, the Manager shall be deemed to have approved the material submitted; provided, however, that to the extent that such material contemplates a variance from the requirements of this Declaration or of the Development Guidelines, the failure of the Manager to take action in a timely manner shall be deemed a disapproval of such material. Any disapproval of such material by the Manager shall be in writing and shall be accompanied by a reasonably detailed explanation for such disapproval. Review or approval by the Manager of any plans shall be solely for its own benefit, and shall not be deemed to be or to result in any warranty, representation or conclusion by the Manager relative to the technical adequacy of such plans or the quality, safety, soundness or compliance with applicable law of the Improvements described by such plans. The Manager shall not be liable for damages by reason of any action, inaction, approval or disapproval by the Manager with respect to any request made pursuant to this Declaration so long as such action, inaction, approval or disapproval did not occur as a result of the Manager's gross negligence or willful misconduct. Notwithstanding anything contained in this Declaration to the contrary, all Improvements must comply with the requirements of Highland City, as those requirements may exist from time to time, including, without limitation, requirements relating to the following: landscaping; signage; lighting; architectural quality; and insurance.

2.2. Use. No part of the Development may be occupied for any use that violates any applicable law, ordinance, rule or regulation or that is inconsistent with this Declaration. Buildings shall be used only for commercial purposes, including, without limitation, grocery stores, financial institutions, offices, retail stores, restaurants and other eating establishments. All Buildings shall be:

(a) first-class buildings designed for grocery store, financial institution, office, retail store, restaurant, other eating establishment or other commercial use of the type and quality typically found in first-class, high-quality commercial developments;

(b) architecturally and aesthetically compatible with all other then-existing Buildings;

(c) constructed and operated in such a manner as will preserve the fire insurance rating on any other then-existing Buildings; and

(d) constructed in compliance with all applicable state, county and municipal subdivision, building, zoning, sign and other laws, ordinances, rules and regulations and the Development Guidelines.

2.3. Construction. Prior to or in conjunction with the construction and completion of any Building, related Landscaping and Vehicular and Pedestrian Areas shall be constructed by the Owner of the Building concerned in accordance with this Declaration and the site plan for the Development approved by Highland City. Vehicular and Pedestrian Areas shall be surfaced with asphalt or concrete, shall be adequately striped or otherwise marked and shall be graded and constructed in such a way as to ensure adequate water drainage. After the initial improvement and development of any Landscaping or Vehicular and Pedestrian Areas, the same shall not be demolished, removed or altered in any material respect without the prior written approval of the Manager, such approval not to be unreasonably withheld.

2.4. Maintenance. Each Owner shall maintain in good and attractive order, condition and repair all Improvements situated on such Owner's Lot that are not required by this Declaration to be maintained by the Manager. No provision of this Declaration shall be construed to mean that any Building cannot be razed or removed at any time or must be restored or reconstructed if damaged or destroyed. However, if an Owner razes or removes any Building, or if any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Lot on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and sightly condition pending construction of another Building.

2.5. Development Guidelines. The Manager may adopt and promulgate (and may from time to time as necessary or appropriate, modify), and shall furnish to any interested party on written request, such Development Guidelines as may be reasonably necessary or appropriate, in the reasonable judgment of the Manager, to amplify or make more detailed any restrictions or requirements contained in this Declaration for Improvements, to advise interested parties of the standards and policies that will be applied in reviewing plans for proposed Improvements and to establish appropriate procedural rules with respect to the submissions of plans for approval.

### 3. Common Area Easements.

3.1. Access and Parking Easement. Each Lot shall have appurtenant thereto and be benefited by, and the Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress and vehicular parking (without charge) on, over and across those areas designed for such use. The



use of such right-of-way and easement shall be limited to parking for the public and general commercial purposes, which shall include reasonable and customary deliveries. Once constructed, no Vehicular and Pedestrian Areas shall be reconfigured so as to eliminate or substantially impair the right-of-way and easement created pursuant to this Paragraph 3.1 without the prior written approval of the Manager, such approval not to be unreasonably withheld.

3.2. Utility Easement. Each Lot shall have appurtenant thereto and be benefited by, and the Common Area and each Lot (except for those portions on any Lot on which Buildings are or will be located) shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, any underground Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage (including retention ponds) and all types of water) under, through and across the Common Area. Prior to installation, the location of such pipes, lines, wires, conduits and related facilities must be approved by the Owner(s) of the Lot(s) that will be burdened by such right-of-way and easement, such approval not to be unreasonably withheld. If the rights provided for in this Paragraph 3.2 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Owner's sole cost, restore to their previous condition any Improvements that may be damaged as a result of such exercise. Each utility pipe, line, wire, conduit and related facility located in the Development shall be located underground to the extent reasonably possible.

3.3. No Obstruction. Except to the extent approved by the Manager pursuant to Paragraph 2.1, no Owner shall permit to be constructed or placed on any portion of the Common Area any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Development, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that the Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area. Any obstruction or interference permitted under this Paragraph 3.3 shall be done in a manner reasonably calculated to minimize its impact on businesses in the Development.

#### 4. Manager's Duties Regarding Common Area.

4.1. Generally. The Manager shall timely perform or cause to be performed (for example, through subcontractors, including affiliates of the Manager) the duties set forth in this Paragraph 4, for which the Manager shall be reimbursed in accordance with this Declaration. All reasonable costs, expenses, fees and other amounts incurred or payable by the Manager in connection with the duties set forth in this Paragraph 4, whether or not such costs, expenses, fees or other amounts are properly capitalized under generally accepted accounting principles, are part of the Common Expenses payable by the Owners under Paragraph 5. The Manager shall have no

obligation to perform, and no liability for failure to perform, any obligation set forth in this Declaration, the cost of which is to be reimbursed (in whole or in part) by the Owners, if the funds to pay for such obligation are not timely received by the Manager pursuant to this Declaration.

4.2. Maintenance of Common Area. After the Common Area is initially improved and developed, the Manager shall keep the Common Area in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class commercial development (except that as regards the Common Utility Facilities, the Manager shall be obligated to accomplish the foregoing only to the extent that such matters are not the responsibility of or accomplished by the respective utility companies involved); provided, however, that each Owner shall be solely responsible to provide and pay for the watering of all Landscaping located on such Owner's Lot, unless such watering is done by Manager as part of the Common Expenses. The foregoing shall include, without limitation, maintenance, repair and replacement, as necessary and appropriate, of all Landscaping and other Improvements located on the Common Area, including, without limitation, maintaining, repairing and replacing asphalt, parking lot lighting and parking medians and keeping the Common Area reasonably free of snow, ice and rubbish.

4.3. Insurance on Common Area. The Manager shall maintain commercial general liability insurance insuring all Owners and such other persons who hold a leasehold estate or other interest in any Lot and who are designated as a named insured in a writing delivered to the Manager by the Owner of such Lot, as their respective interests may appear, against all claims for bodily injury, death or property damage occurring on the Common Area. Such insurance shall be carried with a company having a rating of not less than A-:7 in the most recent issue of Best's Key Rating Guide, Property-Casualty and shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and property damage, which may be increased by the Manager in its reasonable discretion from time to time.

4.4. Damage of Common Area. If all or any part of the Common Area is damaged or destroyed through casualty, the Manager shall, as soon as reasonably possible, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction concerned. Prior to such rebuilding and restoration, each Owner shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Expense Percentage of such Owner by the projected cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from persons causing such damage actually received by the Manager). Appropriate additional payments by, or refunds to, each Owner shall be made on completion of such rebuilding or restoration. Alternatively, the Manager may collect the actual or projected cost of such rebuilding or restoration following commencement or completion of such rebuilding or restoration.

4.5. Condemnation of Common Area. If all or any part of the Common Area is taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be paid to the Manager, except for any portion of such award or proceeds for the value of the land (as opposed to any Improvements

on the land), which portion shall be paid to the Owner of such land. The Manager shall, as soon as reasonably possible, restore the remaining Improvements in compliance with all applicable laws, ordinances, rules and regulations. Such restoration shall be of equal or better quality in materials and workmanship as the original Improvements, and the cost of such restoration, in excess of the condemnation award and proceeds available, shall constitute Common Expenses. Any condemnation award or proceeds for the Improvements remaining after such restoration shall be distributed to the Owner of the land concerned.

4.6. Default of Manager. If the Manager fails to perform any obligation under this Paragraph 4 and such failure continues for a period of thirty (30) days after written notice of such failure is given to the Manager by any Owner or Qualified Mortgagee, or if the performance of such obligation would reasonably require more than thirty (30) days, if the Manager fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Owner or Qualified Mortgagee giving such notice may, on written notice to the Manager and each other Owner, perform such obligation in the stead of the Manager. Such Owner or Qualified Mortgagee shall be reimbursed for such performance by all Owners in accordance with each Owner's Common Expense Percentage in the same manner as if such obligation had been performed by the Manager.

5. Common Expenses.

5.1. Budget. At least annually, the Manager shall submit to each Owner a proposed budget for the Common Expenses for the following year. No Owner shall unreasonably withhold or delay its approval of such budget. Each Owner shall give the Manager written notice of its approval or disapproval of such budget within thirty (30) days after receipt. If any Owner fails to give such notice within such thirty (30) day period, such Owner shall be deemed to have approved such budget. Any disapproval of such budget shall be accompanied by a reasonably detailed explanation for such disapproval. If a Majority of the Owners approve or are deemed to have approved such budget, such budget shall be deemed to be approved. If a Majority of the Owners do not approve or are not deemed to have approved such budget, the Manager and all disapproving Owners shall reasonably cooperate to address and resolve the reasons for such disapproval as soon as reasonably possible so as to arrive at a budget that is approved or deemed approved by a Majority of the Owners. Whenever a budget is revised as a result of Owner disapproval, the Manager shall submit such revised budget to each Owner, and the foregoing process shall be repeated, having the same time periods for approval and disapproval.

5.2. Collection. The Manager is expressly authorized by each Owner to incur all costs, expenses, fees and other amounts included within the definition of "Common Expenses" set forth in Paragraph 1, and each Owner shall contribute such Owner's Common Expense Share in the manner described in this Paragraph 5. The Manager shall make reasonable, good faith efforts to collect from each Owner such Owner's Common Expense Share and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Common Expense Share on a monthly, quarterly or other periodic basis as the actual amount of the Common Expense Share becomes known (in which event the Common Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Owner in advance based on the

Manager's reasonable estimate of the Common Expense Share for the period concerned, which estimate shall be provided to each Owner at least annually. If the Manager adopts the second alternative, each Owner shall pay such Owner's Common Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, the Manager shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Common Expense Share for such calendar year. If such final statement reveals that the monthly installments made by an Owner aggregate less than such Owner's Common Expense Share for such calendar year, such Owner shall pay the amount owing to the Manager within thirty (30) days after such final statement is furnished. If such final statement reveals that an Owner's payments aggregate more than such Owner's Common Expense Share for such calendar year, the excess amount shall, at the option of the Manager, either be returned to such Owner or be applied by the Manager to amounts next due from such Owner under this Paragraph 5. Any amount required to be paid under this Paragraph 5 that is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Manager for any payment not made on the date when due. Such late charge is payable not as a penalty, but in order to compensate the Manager for the additional expense involved in handling the delinquent payment. The acceptance by the Manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by the Manager that relate to the Common Expenses shall be open to examination and audit by any Owner on at least ten (10) days' prior written notice to the Manager.

5.3. Default. If any Owner fails to perform any obligation under this Declaration (other than the payment of money) and such failure continues for a period of thirty (30) days after written notice of such failure is given to such Owner by the Manager, or if the performance of such obligation would reasonably require more than thirty (30) days, if such Owner fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Manager may, on written notice to such Owner, perform such obligation in the stead of such Owner, or exercise any other right or remedy existing at law or in equity. The Manager shall be reimbursed by such Owner on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of eighteen percent (18%) per annum.

5.4. Lien. If not paid when due, the amounts payable under this Paragraph 5 and any other amounts payable to the Manager under this Declaration may be secured by a lien against the delinquent Owner's Lot. Such lien shall be evidenced by a notice of lien recorded by the Manager in the Official Records. A copy of such notice of lien shall be given to the delinquent Owner and any Mortgagee holding a Mortgage covering such Owner's Lot within ten (10) days following recordation. Such notice of lien shall set forth the unpaid amount, the date such amount was due, the name of such Owner and a description of the property subject to such lien, and shall be signed and acknowledged by the Manager. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of mortgages covering real property, and shall be subject and subordinate to (a) each Mortgage recorded at the time such

notice of lien is recorded, (b) this Declaration and the Development Agreement, (c) each (recorded or unrecorded) utility right-of-way and easement existing at the time such notice of lien is recorded, (d) the interests of each tenant under each lease (whether recorded or unrecorded) existing at the time such notice of lien is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien is recorded.

5.5. Certain Obligations and Rights. The obligations of each Owner under Paragraph 5.2 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by the Manager or, on written notice to the Manager and each Owner, by any other Owner. No Owner may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Area, by abandonment of such Owner's Lot or any Improvements on such Owner's Lot or by waiver of any of the services or amenities provided for in this Declaration. Suit to recover a money judgment for any amount due may be maintained without foreclosing or waiving the lien described in Paragraph 5.4. All remedies set forth in this Paragraph 5 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for any breach may be inadequate.

6. Taxes. Each Owner shall pay, prior to delinquency, all Taxes on such Owner's Lot, unless the collection of such Taxes and any sale or forfeiture of such Lot for nonpayment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Lot is not assessed and taxed as an independent Lot for tax purposes, the Taxes allocable to such Lot shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax Lot assessed, such proportion to be determined by the Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

7. Insurance. Each Owner shall maintain commercial general liability insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Development. Such insurance shall be carried with a responsible company, shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and property damage, and shall name the Manager as an additional insured. With the prior written approval of the Manager, any Owner may comply with the requirements of this Paragraph by the purchase of blanket coverage, and may elect such deductible provisions as are consistent with good business practices. Each Owner shall, on request, furnish the Manager with a certificate issued by its insurer evidencing that insurance is in force that complies with the requirements of this Paragraph. Notwithstanding the foregoing, any Owner may self-insure as to any or all of the risks for which insurance is required to be carried by such Owner pursuant to the foregoing portion of this Paragraph through a commercially reasonable program of self-insurance, but only for so long as such Owner maintains a minimum net worth of at least \$100,000,000.

8. Indemnification. Each Owner shall indemnify, defend and hold harmless the Manager and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the indemnifying Owner, including, without limitation, those caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any part of the Development by (a) the indemnifying Owner, (b) any person leasing or occupying the Lot owned by the indemnifying Owner, or (c) any agent, employee, contractor, invitee or licensee of either the indemnifying Owner or any person leasing or occupying the Lot owned by the indemnifying Owner.

9. Prohibited Uses. The following uses are prohibited in the Development:

- 9.1. a manufacturing facility;
- 9.2. a dry cleaners with on-premises cleaning;
- 9.3. a coin-operated laundry;
- 9.4. a secondhand store;
- 9.5. a bar, cocktail lounge, pub, tavern, nightclub, comedy club, music or dance hall or disco;
- 9.6. a church;
- 9.7. an establishment having nude or semi-nude dancing, entertainment or service providers or any other sexually oriented business;
- 9.8. a billiard parlor or pool room;
- 9.9. a bingo parlor;
- 9.10. a flea market;
- 9.11. a massage parlor;
- 9.12. a funeral home;
- 9.13. a facility for the sale of paraphernalia for use with illicit drugs;
- 9.14. a facility for the sale or display of pornographic or sexually explicit material, such as adult theaters or adult bookstores, as determined by community standards for the area in which the Development is located;

- 9.15. an off-track betting parlor;
- 9.16. a carnival, amusement park or circus;
- 9.17. a facility for the sale of new or used motor vehicles, trailers or mobile homes;
- 9.18. a facility for any use that is illegal;
- 9.19. a skating rink;
- 9.20. a training or educational facility in excess of 10,000 square feet, including, without limitation, a beauty school, barber college, reading room, place of instruction or other operation catering primarily to students or trainees rather than to purchasers of goods and services sold in the Development; or
- 9.21. an arcade, pinball or computer game room; provided, however, that:
  - (a) retail facilities in the Development may operate no more than four (4) such electronic games incidental to their primary operations; and
  - (b) a children's activity center, such as Discovery Zone or Jungle Jim's, is not prohibited.

10. Title and Mortgage Protection. Except as set forth in Paragraph 5.4, breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any part of the Development, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any part of the Development.

11. Mortgagee Protection.

11.1. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Development shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

11.2. Notices; Right to Cure. Any Owner, on delivering to any other Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such other Owner at the latest address provided to the notifying Owner by such other Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies

of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

11.3. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Lot covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Lot covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with such Lot.

11.4. Recognition. On request, the Manager agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Paragraph 11.

11.5. Estoppel. The Manager shall, within fifteen (15) days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificate in favor of the requesting Owner and such other persons as the requesting Owner shall designate setting forth the following:

(a) that, to the knowledge of the Manager, such Owner is not in default under this Declaration or, in the alternative, that such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;

(b) that, to the knowledge of the Manager, this Declaration is in full force and effect and has not been modified or amended, except as may be set forth in such estoppel certificate;

(c) any reasonably requested information regarding Common Expenses and liens recorded pursuant to Paragraph 5.4, to the extent that the Common Expenses and such liens relate to such Owner's Lot; and

(d) such other information as the requesting Owner may reasonably request.



The requesting Owner's Mortgagees and purchasers shall be entitled to rely on any estoppel certificate executed by the Manager pursuant to this Paragraph 11.5.

12. Covenants to Run with Land. Each provision of this Declaration shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of the Manager and each Owner and their respective successors and assigns, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Development, and all interests in any part of the Development shall be subject to this Declaration. The interests in and rights concerning any portion of the Lots held by or vested in the Parties or any other person on or after the date of this Declaration shall be subject and subordinate to this Declaration, and this Declaration shall be prior and superior to such interests and rights. By in any way coming to have any interest in or occupying any part of the Development, the person so coming to have such interest or occupying agrees to be bound by this Declaration; provided, however, that no such person shall have any right or liability under this Declaration as an Owner until such person becomes an "Owner," as defined in Paragraph 1, nor shall such person have liability under this Declaration for any acts committed prior to the time such person became an Owner.

13. Amendment.

13.1. Requisite Parties. This Declaration may be amended only by an instrument recorded in the Official Records, executed by the Manager, Declarant and each Owner, except as follows:

(a) any amendment to this Declaration that expands the Development to include any other real property only needs to be executed by the Manager, Declarant and each Owner of such other property, and shall set forth a metes and bounds description of such other property;

(b) any amendment to this Declaration that divides an existing Lot into two or more Lots only needs to be executed by the Manager, Declarant and the Owner of the Lot concerned, and shall set forth the metes and bounds descriptions of such new Lots;

(c) any amendment to this Declaration that changes the descriptions of two or more Lots only needs to be executed by the Manager, Declarant and each Owner of such Lots, and shall set forth the new metes and bounds descriptions of such Lots; and

(d) any instrument effective as an amendment to this Declaration pursuant to which any Manager assigns its rights and duties under this Declaration to another Owner only needs to be executed by the existing Manager and the new Manager, and shall set forth a metes and bounds description of such new Manager's Lot.

13.2. No Other Person Required. Unless it is a required party to the amendment concerned under Paragraph 13.1, no other person (including, without limitation, any person holding an interest in or occupying any Lot, whether as a tenant under a lease or otherwise) needs

to execute such amendment in order to make such amendment in all respects effective, valid, binding and enforceable; provided, however, that no amendment to this Declaration shall affect the rights of any Mortgagee holding a Mortgage that constitutes a lien on the realty directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. All requisite parties to an amendment shall not withhold, condition or delay the approval or execution of such amendment in a manner that is unreasonable.

13.3. Notice to Highland City. Following the recordation of any amendment to this Declaration, the Manager shall mail a copy of such amendment to:

Highland City  
5378 West 10400 North  
Highland, Utah 84003  
Attention: City Administrator

14. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

15. Release on Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any Lot, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Lot, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

16. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Development may be owned by the same person from time to time, it being the intention of the Parties to create a common scheme for the development and operation of the Development that will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 19.

17. Force Majeure. The Manager and any Owner or other person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, for so long as (but only for so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Manager, the Owner or other person prevented or delayed.

18. Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions that are to apply among the Lots and that are to define and govern the rights and obligations as between those persons interested in a given Lot, on the one hand, and those persons interested in other Lots, on the other. Accordingly, this Declaration shall not alter any agreements that allocate rights and obligations of persons having an interest in the same Lot among such persons or third parties, but such agreements shall not limit the liability or obligation of any person under this Declaration.

19. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which they are recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by each Owner of the Development and the Mortgagee under each Mortgage then affecting the Development.

20. Notices. Any notice or demand to be given by the Manager to any Owner or by any Owner to the Manager or another Owner shall be given in writing by personal service, telecopy (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after telecopying), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner at the address set forth for such Owner in the Official Records or in the taxing records or, if different, at another address provided by such Owner. Any Owner may change the address at which it desires to receive notice on written notice of such change to the Manager and each other Owner. Any notice or demand given under this Declaration shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change that was not properly communicated shall not defeat or delay the giving of a notice.

21. Highland City. Highland City, a Utah municipal corporation, shall be entitled to enforce the provisions of this Declaration, but any such enforcement action shall be subject to the provisions of Paragraph 14.

22. General Provisions. This Declaration shall inure to the benefit of, and shall be binding on, the Parties and their respective successors and assigns. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration

may be exercised concurrently, independently or successively from time to time. The failure on the part of any person to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

THE PARTIES have executed this Declaration on the respective dates set forth below, to be effective as of the date first set forth above. The Parties agree that (i) the interests in and rights concerning each part of the Development held by or vested in the Parties on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and (ii) the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in this Declaration.





HIGHLAND:

HIGHLAND MARKETPLACE, L.C.,  
by its Manager:

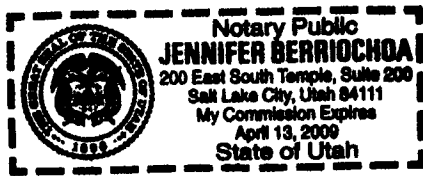
TFP Service Company,  
a Utah corporation

By Thomas A. Hulbert  
Thomas A. Hulbert  
President

Date 4-20-07

State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 20th day of April, 2007, by Thomas A. Hulbert, the President of TFP Service Co., the Manager of Highland Marketplace, L.C.



Jennifer Berriochoa  
Notary Public

My Commission Expires:

4-13-2009

Residing at:

Salt Lake City, UT

CONSENT AND SUBORDINATION  
[First Community Bank]

THE UNDERSIGNED, FIRST COMMUNITY BANK, a New Mexico corporation ("First Community") whose address is 490 East 500 South, Salt Lake City, Utah 84111, consents to the foregoing Declaration of Easements, Covenants and Restrictions (the "Declaration"), and agrees that (i) the interests in and rights concerning each part of the Development (as defined in the Declaration) held by or vested in First Community on or after the date of the Declaration shall be subject and subordinate to the arrangement provided for in the Declaration (whether such interests and rights are as the beneficial holder of the deed of trust described below or reflect some greater estate), and (ii) the arrangement provided for in the Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in the Declaration.

FIRST COMMUNITY BANK


By D. Ball  
Its Vice President  
Date 27 APR 07



State of Utah )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of April, 2007, by Dwayne B Allen, the Vice President of First Community Bank.



  
\_\_\_\_\_  
Notary Public

My Commission Expires:

2/1/09

Residing at:

Salt Lake

CONSENT AND SUBORDINATION  
[The Paula Vega Platt Family Protection Trust]

THE UNDERSIGNED, THE PAULA VEGA PLATT FAMILY PROTECTION TRUST, PAULA VEGA PLATT, TRUSTEE UNDER AGREEMENT DATED FEBRUARY 23, 1999 ("The Paula Vega Platt Family Protection Trust") whose address is 5871 North 10205 West, City of Highland, State of Utah, 84003 consents to the foregoing Declaration of Easements, Covenants and Restrictions (the "Declaration"), and agrees that (i) the interests in and rights concerning each part of the Development (as defined in the Declaration) held by or vested in The Paula Vega Platt Family Protection Trust on or after the date of the Declaration shall be subject and subordinate to the arrangement provided for in the Declaration (whether such interests and rights are as the beneficial holder of the deed of trust described below or reflect some greater estate), and (ii) the arrangement provided for in the Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in the Declaration.

THE PAULA VEGA PLATT FAMILY  
PROTECTION TRUST UNDER AGREEMENT  
DATED FEBRUARY 23, 1999

By: *Paula Vega Platt Trustee*

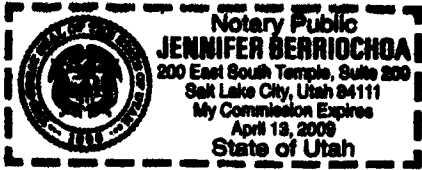
Name: Paula Vega Platt

Its: Trustee

Date: 02.05.07

State of Utah )  
County of Utah ) ss.

The foregoing instrument was acknowledged before me this 2nd day of May, 2007 by Paula Vega Platt, the signer of the foregoing instrument in her capacity as Trustee of The Paula Vega Platt Family Protection Trust under Agreement dated February 23, 1999.



Jennifer Berriochoa  
Notary Public

My Commission Expires:

4-13-2009

Residing at:

Salt Lake City, UT