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Alan Spriggs, Summit County Utah Recorder

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By Parr Brown Gee and Loveless

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**MASTER DECLARATION  
FOR  
PARK CITY TECH CENTER**

Parcel ID #'s - Lot 4 - PCTC-4  
Lot 5 - PCTC-5

## MASTER DECLARATION

### FOR

## PARK CITY TECH CENTER

THIS MASTER DECLARATION FOR PARK CITY TECH CENTER (this "**Declaration**") is executed as of July 25, 2012 by BOYER SNYDERVILLE JUNCTION, L.C., a Utah limited liability company ("**Declarant**"); and BOYER SNYDERVILLE 1, L.C., a Utah limited liability company ("**Boyer Snyderville 1**"). Declarant and Boyer Snyderville 1 are sometimes collectively referred to in this Agreement as the "**Parties**" and individually as a "**Party**."

### RECITALS

A. Declarant is the fee owner of that certain parcel of real property ("**Lot 4**") located in Summit County, Utah (the "**County**"), more particularly described as:

Lot 4, Park City Tech Center Subdivision, in accordance with a Subdivision Plat recorded with the Recorder on October 28, 2010 as Entry No. 909756.

B. Boyer Snyderville 1 is the fee owner of that certain parcel of real property ("**Lot 5**") located in the County, more particularly described as:

Lot 5, Park City Tech Center Subdivision, in accordance with a Subdivision Plat recorded with the Recorder on October 28, 2010 as Entry No. 909756.

C. Lot 4 and Lot 5 (collectively, the "**Land**"), are depicted as Lot 4 and Lot 5, respectively, on the Site Plan. Unless otherwise defined in the preamble to this Declaration or these Recitals, capitalized terms used in these Recitals shall have the meanings set forth in Section 1.1.

D. The Parties are the holders of certain rights (the "**Open Space Restrictions**") under that certain Declaration of Open Space Easement and Restrictions, dated October 29, 2010, and recorded on November 1, 2010 as Entry No. 00909952 in Book 2054 at Page 1233 with the Recorder, which rights include, without limitation, restricting the use of that certain parcel (the "**Open Space Parcel**") more particularly described as Lot 2, Park City Tech Center Subdivision, in accordance with a Subdivision Plat recorded with the Recorder on October 28, 2010 as Entry No. 909756 (the "**Subdivision Plat**"), for primarily open space. The Open Space Parcel is depicted as Lot 2 on the Site Plan and is located adjacent to the Land.

E. The Parties are the holders of certain rights (the "**Housing Restrictions**") under that certain Housing Parcel Restrictive Covenant, dated October 29, 2010, and recorded on November 1, 2010 as Entry No. 00909953 in Book 2054 at Page 1250 with the Recorder, which rights include, without limitation, which rights include, without limitation, restricting the use of

that certain parcel (the "**Housing Parcel**") more particularly described as Lot 3, Park City Tech Center Subdivision, in accordance with the Subdivision Plat, for an affordable housing project. The Housing Parcel is depicted as Lot 3 on the Site Plan and is located adjacent to the Land.

F. The Land is benefitted by, and subject to, the Easement Agreement (the "**Easement**") dated August 24, 2010, executed by Crestview Condominium Association, Inc., a Utah nonprofit corporation, in favor of Declarant, and recorded on September 15, 2010 as Entry No. 00906752 in Book 2047 at Page 1712 with the Recorder, which Easement provides, among other things, a perpetual, nonexclusive right-of-way and easement for the purpose of providing vehicular and pedestrian access from North 2200 West (Powderwood Drive) to the Land ("**Overland Drive**"). The Land, the Open Space Restriction, the Housing Restrictions and the Easement are collectively referred to as the "**Property**."

G. The Land is currently zoned Community Commercial (CC) pursuant to the Summit County Ordinance No. 706 recorded on December 11, 2008 as Entry No. 860844 in Book 1959 at Page 1211 with the Recorder (the "**Applicable Zoning Ordinance**").

H. The Property is subject to the Development Agreement dated December 10, 2008 (the "**Development Agreement**") entered into between the County and Declarant, which Development Agreement is attached to Summit County Ordinance No. 698 recorded on December 11, 2008 as Entry No. 860845 in Book 1959 at Page 1217 with the Recorder.

I. The Parties plan to develop the Land in accordance with Development Agreement and the Applicable Zoning Ordinance as a first class office project (the "**Project**").

J. Declarant has caused or will cause The Park City Tech Center Master Property Owners' Association, Inc., a Utah nonprofit corporation (the "**Master Association**"), to be incorporated under the laws of the State of Utah for the purpose of exercising the functions set forth in this Declaration.

K. The Parties enter into this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of the Property and the Project.

NOW, THEREFORE, the Parties hereby declare and grant as follows:

**I.  
DEFINED TERMS**

1.1 **Defined Terms.** In addition to the capitalized terms which are previously defined in this Declaration, the following capitalized terms shall have the meanings set forth in this Section, unless the context requires otherwise.

"**Access Roads**" means Landmark Drive and Tech Center Drive, which are depicted on the Site Plan and provide access to the Property, and Overland Drive.

**“Actions”** means all lawsuits, causes of action, arbitrations, administrative actions or proceedings, mediations and other proceedings, whether judicial, administrative or otherwise with respect to a specified matter.

**“Adjustment Date”** means January 1, 2016, and every fifth (5<sup>th</sup>) anniversary of such date.

**“Approving Representative”** has the meaning set forth in Section 13.12 below.

**“Articles”** means the Articles of Incorporation for The Park City Tech Center Master Property Owners’ Association, Inc., as filed with the Utah Department of Commerce, Division of Corporations and Commercial Code and as may be amended and/or restated from time to time.

**“Assessment(s)”** means an assessment for expenditures made or liabilities incurred by or on behalf of the Master Association or Declarant in carrying out its responsibilities under this Declaration, as applicable, and including Late Charges, attorneys’ fees, and interest permitted and assessed pursuant to the Governing Documents.

**“Assessment Lien”** means that lien on a Parcel or Parcels created by reason of the delinquency described in Article VIII upon recordation of a Notice of Assessment Lien with the Recorder.

**“Board”** means the body described and defined in Section 7.1 to act on behalf of the Master Association, subject to and in accordance with the Articles and the Bylaws.

**“Building”** means any enclosed structure designated for occupancy by the Owner or Permittees constructed or located on a Parcel, which for the purpose of this Declaration shall include any appurtenant foundations, overhangs, supports, service areas and other outward extensions.

**“Bylaws”** means the Bylaws adopted by the Master Association, as may be amended from time to time.

**“Claims”** means any and all claims, liens, demands, causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, without limitation, any action, omission, misrepresentation or other basis for liability founded either in tort, contract or otherwise and the duties arising thereunder, whether currently existing or which may hereafter accrue, known or unknown, anticipated or unanticipated, in law or in equity, liquidated or unliquidated, contingent or otherwise.

**“Commercial Uses”** means commercial uses and facilities including, without limitation, hotels, restaurants, private clubs, retail, banks, financial services, recreation facilities, health care facilities, accessory uses permitted by the Code, and facilities for limited indoor production, warehousing and distribution.

**“Common Areas”** means: (i) all Project Common Areas; and (ii) all Shared Common Areas.

**“Construction Guidelines”** is defined in Section 4.2.

**“Declarant”** means Boyer Snyderville Junction, L.C., a Utah limited liability company, (which is the Person designated as “Declarant” in introduction of this Declaration) for so long as such Person: (i) is an Owner of any Parcel within the Project; and (ii) has not recorded with the Recorder a notice of its resignation of Declarant in the manner set forth below in this definition. If at any time such Declarant is not an Owner of any Parcel within the Project, or if Declarant records with the Recorder a notice that it is resigning as Declarant, then such Declarant may, at its discretion, designate the successor Declarant, which shall either be the Master Association or another Owner of any Parcel within the Project. Such designation shall be in the form of a written amendment to this Declaration, which shall be signed and acknowledged by the resigning and successor Declarant, shall be in recordable form, and shall be effective when the amendment to this Declaration is recorded with the Recorder. Upon recording such Amendment, the successor Declarant shall have all rights, powers, duties and obligations granted to and assumed by the originally named Declarant under this Declaration, including, without limitation, the right to designate the next successor Declarant, which designation shall occur in accordance with the foregoing procedure as though the successor Declarant were the original Declarant. In all events, Declarant shall be the Master Association or the Owner of a Parcel within the Project. If a Declarant which is not the Master Association is no longer eligible to serve in such capacity but fails within sixty (60) days of written request of the Master Association to designate a successor Declarant, then the Master Association shall automatically become Declarant hereunder. The right to be Declarant is determined pursuant to this provision and does not run with the land as to any Parcel within the Project, it being intended that Declarant status be personal to the original named Declarant and each specifically and properly named successor, or failing such designation, the Master Association.

**“Default Rate”** means that annual rate of interest 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 federally chartered bank in Utah in terms of deposits) from time to time plus two percentage (2%) points, but in no event shall the Default Rate be more than any maximum rate of interest permitted by law. The Default Rate shall fluctuate with such changes in the prime rate.

**“Design Guidelines”** means the Design Guidelines recorded with the Recorder on June 3, 2011 as Entry No. 00923862 in Book 2083 at Page 0393.

**“Design Review Board”** means a design review board consisting of three Persons or such greater number of Persons as designated from time to time by Declarant. One (1) Person on the Design Review Board will be a member of the Snyderville Basin Planning Commission and shall be appointed by the County and the other Persons shall be appointed by Declarant.

**“Development Rights”** means those development rights reserved by Declarant as set forth in Article XI.

**“Governing Documents”** means those documents listed in Section 2.4, as they may be amended from time to time.

**“Governmental Authorities”** means any and all governmental or quasi-governmental entities, districts, agencies or political or administrative subdivisions or units having jurisdiction over a specified matter.

**“Governmental Requirements”** means, with respect to any specified matter, any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules and/or conditions of any Governmental Authority having jurisdiction over the specified matter.

**“Improvements”** means any and all Buildings, structures, amenities, site work, landscaping, hardscaping, utilities, roads, drives, parking areas, and other improvements or items installed within or upon a Parcel.

**“Incidental Commercial Uses”** means uses and facilities incidental to, and offered to support office purposes, including, without limitation, hotels, restaurants, private clubs, retail, banks, financial services, recreation facilities, health care facilities, accessory uses permitted by the Code, and facilities for limited indoor production, warehousing and distribution.

**“Indemnitee”** is defined in Section 6.3.

**“Indemnitor”** is defined in Section 6.3.

**“Index”** means 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.

**“Late Charge”** means a reasonable late charge established from time to time by Declarant.

**“Maintenance Costs”** means the cost and expense incurred by (i) Declarant to enforce the Open Space Restriction and Housing Restriction, and (ii) by Declarant, a Manager or the Master Association to maintain and insure the Project Common Areas and/or Shared Common Areas.

**“Manager”** means a Person designated by Declarant to perform the obligations and duties of “Manager” under this Declaration.

**“Master Plan”** means the master concept plan attached as Exhibit B to the Development Agreement.

**“Mortgage”** means an indenture of mortgage, deed of trust or fixture filing or other security interest on a Parcel or a Sale and Leaseback with respect to a Parcel.

**“Mortgagee”** means any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust or the grantee of any security interest constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, including, without limitation, the buyer/lessor in any Sale and Leaseback. The interest held by any Mortgagee in any Parcel shall be subordinate to this Declaration.

**“Notice of Assessment Lien”** means a notice recorded with the Recorder by any Person to whom is owed any Assessment, stating that the Assessment has not been paid and that any required notice has been given and any permitted grace period for such payment, if any, has expired.

**“Owner”** means each Person, who, at any given time, holds: (i) fee title to any full Parcel; or (ii) an interest as a ground lessee of any full Parcel for an initial term of at least forty (40) years, but only if the Owner of such Parcel irrevocably designates such ground lessee to be the Owner in writing, which designation is delivered to Declarant and recorded with the Recorder. An Owner shall not include tenants and sublessees of less than a full Parcel and shall not include the owner of any interest in a tract of land that is not a “Parcel” pursuant to this Declaration such as a condominium unit or a unit in a planned unit development. If, at any time, that an interest in a full Parcel, or portions thereof, shall be vested in more than one Person, then the Persons owning or holding interests in such Parcel shall be required to designate in a written notice to the Declarant an Approving Representative in accordance with Section 13.12 below.

**“Parcel”** means any one of the Parcels.

**“Parcels”** means those legally subdivided parcels which, in the aggregate at any time, comprise the Land and any additional tracts of real property which may subsequently be made subject to this Declaration in accordance with the provisions of this Declaration. Notwithstanding the foregoing:

(i) If a Parcel is converted to a condominium project, the condominium units shall not constitute a Parcel and the Persons owning or holding interests in such Parcel shall designate an Approving Representative in accordance with Section 13.12 below.

(ii) If a planned unit development is created with respect to a Parcel, then the individual lots or units into which the Parcel is subdivided shall not constitute Parcels and the owner of such lots or units shall designate an Approving Representative in accordance with Section 13.12 below.

**“Parking Facilities”** means paved pedestrian sidewalks and walkways, the driveway, the parking stalls and related parking facilities and improvements located on, under or over a Parcel at any time and from time to time, including, without limitation, parking structures, garages, parking decks, curbs, traffic control signs, lighting equipment and landscaping, and as the same may be modified, reconstructed or altered from time to time.

**“Permittees”** means the Owners of any and all Parcels and:

(i) All of the respective heirs, successors, assigns and grantees of such Owners;

(ii) All Persons who now hold, or hereafter hold, any interest in any real property within the Project the nature of which does not qualify them to be an Owner, including, without limitation, the owner of a condominium unit, the owner of a unit or lot in a planned unit development, the owner of a partial interest in a Parcel, and the owner of a Parcel which has irrevocably designated its ground lessee to be the Owner of the Parcel for purposes of this Declaration, and all of the respective heirs, successors, assigns, and grantees of all such Persons;

(iii) The respective tenants of the foregoing Owners and Persons, and their subtenants at any level removed; and

(iv) The officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of the foregoing Owners and Persons.

Notwithstanding the scope of the foregoing definition, Declarant may establish rules which regulate Persons engaging in advertising, public, charitable or political activities within the Project, and may deny such Persons the status of a Permittee.

**“Person”** means any natural person, partnership, trust, corporation, limited liability company or other legal entity.

**“Prohibited Uses”** means any use or operation which is inconsistent with the development or operation of the Project as a first class office 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;



(c) Any use which produces any noxious odor which may emanate outside any Building other than such odors as are typically incidental to first class office use;

(d) Except for construction activities, any use which produces any excessive quantity of dust, dirt or ash;

(e) Except for construction activities, 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 as approved in writing by Declarant;

(f) Any smelting, agriculture or mining operation;

(g) Any mobile home or trailer court, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising;

(h) Except for construction activities, 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 (but not including a retail laundry and dry cleaning storefront where no dry cleaning plant is included in or on the premises), laundromat, 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 but only if such materials are not kept in public view; (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; or (iii) the operation of a movie theater that exhibits, promotes, presents or displays so-called R-rated films or the equivalent;

(l) Any automobile body and fender repair shop operation; and

(m) Any off-track betting parlor.

**"Project Common Areas"** means (i) the Access Roads, unless and for so long as, such Access Roads have been dedicated to a Governmental Authority, and (ii) any and all other tracts of land or real property interests designated by Declarant or Master

Association as Project Common Areas (which tracts must be owned by the Master Association or owned by Governmental Authorities and maintained by the Master Association) including, without limitation, all water rights and privileges owned, leased or used by the Master Association in connection with the Project Common Areas.

**“Recorder”** means the County Recorder of Summit County, Utah.

**“Restrictions”** means those easements, covenants, restrictions, liens and charges fixed and established upon the Project pursuant to this Declaration.

**“Sale and Leaseback”** means 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 Person wholly controlled by such Owner.

**“Shared Common Areas”** means Common Areas within the exterior boundaries of a specific Parcel used for any of the purposes set forth in Section 5.2.

**“Sign Program”** means a sign program for any and all signage installed within or for the Project, which shall be promulgated and amended from time to time by or at the direction of Declarant, at its discretion, and which may include, without limitation, detailed design, and engineering and specification requirements relating to signage for all or any Parcel within the Project.

**“Site Plan”** means the Site Plan attached hereto as Exhibit “A,” as may be supplemented by the Master Plan or the Subdivision Plat.

**“Taxes”** means any and all taxes, assessments, impositions or levies of any kind (in all cases, whether known or unknown, general or special, anticipated or unanticipated) imposed by any Governmental Authority.

## II.

### SCOPE OF DECLARATION; PROPERTY

2.1 **Submission of Property to the Declaration.** The Parties hereby submit and subject the Property to the provisions of this Declaration.

2.2 **Purpose and Intent.** The Parties declare that this Declaration is made for the purposes set forth in the Recitals.

2.3 **Binding Effect.** Each Party declares that all of the Property shall be held, sold and conveyed subject to the easements, Restrictions, powers, covenants and conditions of this Declaration, except such Parcels that are subsequently conveyed or exclusively dedicated to the County or to other Governmental Authority as a right-of-way, a public street, road or highway, public parks, public open space or other civic, institutional or public purpose and withdrawn from this Declaration pursuant to an amendment which is recorded with the Recorder; provided,

such amendment may provide that the Master Association continues to maintain such areas as part of Maintenance Costs. If the dedication of any such area is subsequently vacated or terminated during the term of this Declaration or the County or other Government Authority subsequently conveys the Property to a non-Government Authority, then upon such vacation or termination of such dedication or such subsequent conveyance to a non-Governmental Authority, such area shall then become subject again to the easements, Restrictions, powers, covenants and conditions of this Declaration.

2.4 Governing Documents. The Governing Documents consist of the following (as may be amended from time to time): (a) this Declaration; (b) Articles; (c) Bylaws; (d) Subdivision Plat and such other plats, maps, and deeds, as applicable; (e) rules and regulations adopted by Declarant; (f) Board resolutions and actions; (g) the Design Guidelines; and (h) the Development Agreement. Nothing in this Section shall preclude any Parcel from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive provisions shall control.

### III. USE IN GENERAL

3.1 Permitted Use. Except as otherwise set forth in Section 3.2 below and subject to the other terms of this Declaration, the Project may be used only for first class office purposes, which may include research offices, and Incidental Commercial Uses, the primary purpose of which are to service the Permittees of the Project. No Parcel shall be used for a Prohibited Use.

3.2 Commercial Areas. Declarant may designate certain Parcels as Commercial Parcels. Such designation may be subsequently vacated or terminated by in the same manner as it was originally created. The Commercial Parcels shall be used only for Commercial Uses.

3.3 Zoning. This Declaration shall be subject to the Applicable Zoning Ordinance.

### IV. CONSTRUCTION

4.1 Initial Building Approval. No Owner shall commence or permit the commencement of construction of any Improvement on any Parcel unless the location, design, architecture, exterior elevations, configuration, height, dimensions, landscape exterior finishes, materials, colors, lighting, irrigation plan and other attributes thereof shall have first been approved in writing by Declarant and by the Design Review Board, which approval (if applicable) shall be in the form of written approval of detailed plans and specifications for such Improvements. All Improvements shall be constructed in strict accordance with the Design Guidelines and the Development Agreement and with the plans and specifications approved by Declarant and the Design Review Board. Notwithstanding anything in this Declaration to the contrary, and without limitation, it shall be reasonable for Declarant or the Design Review Board to withhold such approval if any proposed improvement is not consistent with those depicted on the applicable Site Plan, or if such Improvements are not architecturally, functionally and/or

aesthetically harmonious with the other Improvements then located or approved for construction within the Project. No Owner shall make or permit to be made any material alterations to any Improvement without first obtaining a similar approval from Declarant and the Design Review Board 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 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 or for an Owner or any other Permittee pursuant to this Declaration shall be subject to and performed in accordance with the Construction Guidelines. Neither approval of any plans and specifications relating to the Project or any aspect thereof by Declarant or the Design Review Board, nor the promulgation of the Construction Guidelines shall constitute a representation or warranty of the workmanship or materials used or to be used in the construction of any Improvements, the structural or engineering design set forth in the plans or specifications, that there are no omissions or errors in the plans and specifications, or as to compliance of the plans and specifications (or any Improvements to be constructed pursuant thereto) with any applicable laws. In no event shall Declarant or the Design Review Board be responsible for any defects in any plans or specifications, or in any Improvements constructed, installed or made in accordance with any such plans or specifications, whether by virtue of Declarant's and the Design Review Board's approval rights with respect to the same, its adoption of the Construction Guidelines, or otherwise. The foregoing disclaimers shall apply with regard to both initial construction of any Improvements and any subsequent alterations thereof.

4.2 Alteration Approval. In order to maintain the architectural and functional harmony of the Project, no Improvement 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 Improvement, unless such alteration is first approved in writing by Declarant and the Design Review Board in their reasonable discretion and such alteration is made in accordance with the Construction Guidelines, if any. All alterations or Improvements shall be constructed in strict accordance with the Design Guidelines, the Planning Code and Standards, and the plans and specifications approved by Declarant and the Design Review Board and the Construction Guidelines.

4.3 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 Governmental Requirements. All construction activities within the Parcels shall be performed so as not to unreasonably interfere with any construction work being performed on the other Parcels, or part thereof, and so as not to unreasonably interfere with the use, occupancy or enjoyment of the other Parcels, or the businesses or other activities being conducted thereon by any other Owner or Permittees.

(b) When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any Improvements, 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 use of any other Parcel, or with the operation of any business or permitted activity on any other Parcel by the Permittees thereof; and (ii) shall be subject to the approval of Declarant and the Design Review Board, in their 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.

(c) Each Owner shall diligently complete all construction activities within its Parcel in a commercially reasonable manner, 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.

(d) Each Owner shall indemnify, defend and hold harmless each other Owner from and against any and all Claims and Actions 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 and/or because of the filing of any liens against another Parcel, except for Claims or Actions caused by the negligence or wrongful act or omission of the indemnified Owner or its licensees, concessionaires, agents, servants, or employees.

(e) If any lien is filed against the Common Areas of a Parcel as a result of any construction work performed on such Parcel, then such Owner shall cause such lien to be released and discharged of record within thirty (30) days from and after the date of filing thereof. However, with the consent of Declarant, which consent may be withheld in Declarant's sole and absolute discretion, an Owner shall have the right, in good faith, to contest such lien; provided that such Owner shall take all such action as may be necessary to prevent such 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.

v.

## **COMMON AREA EASEMENTS AND ASSESSMENTS**

5.1 **Grant of Easements.** The Parties hereby establish and grant, and each other Person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, shall be deemed to have established and granted, to all other Owners and all Permittees, irrevocable, non-exclusive perpetual easements over, across, upon and beneath the Shared Common Areas for the purposes set forth in Section 5.2.

5.2 Permitted Shared Common Areas. The Shared Common Areas shall be used for some or all of the purposes set forth in this Section as established by this Declaration, the Master Plan, or a Project Master Plan:

(a) Vehicular and pedestrian ingress and egress of any Permittees and the vehicles thereof to and from the Buildings and the public streets.

(b) Installation, operation, maintenance, repair, replacement, relocation, restoration and removal of utility lines, pipes, conduits and facilities of every kind and description including, without limitation, sanitary sewers, storm drains, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls and related utility and service facilities serving all or 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 utility lines, pipes, conduits and facilities. The original location of the utility lines, pipes, conduits and facilities shall be subject to the approval of Declarant. Each Owner shall have the right to enter upon the Shared Common Areas as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation, restoration and removal of the utility lines, pipes, conduits and facilities benefiting its Parcel; provided, however, each Owner does not unreasonably interfere with the use of the Shared Common Areas by other Permittees or of the businesses or activities taking place on other Parcels, and no relocation, restoration or removal of any such utility lines, pipes, conduits and facilities shall be made without the prior written consent of Declarant, which may be withheld for good reason.

(c) Installation, operation, maintenance, repair, replacement, relocation, restoration and removal of 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 walkways and sidewalks 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.

(d) Ingress and egress of delivery and service trucks and vehicles to and from the Buildings and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all Persons who may lease portions of a Building. Each Permittee 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 Parcels or the Shared Common Areas.

(e) Installation, operation, maintenance, repair, replacement, relocation, restoration and removal of common trash, refuse and garbage container storage areas in such

areas reasonably designated by Declarant, areas for the parking of the automobiles of employees of an Owner or other Permittee of any Building and other incidental and related facilities.

(f) 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 and other Improvements and appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

(g) Construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs, and 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, and all associated utility lines and conduits, shall be paid for pro rata by the Owners or Permittees 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, if any, implemented pursuant to the following provisions of this Section. No changes shall be made to such signage, including the locations of same, without the prior written approval of 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.

5.3 Alteration of Shared Common Areas. No Owner or other Person shall alter any vehicular and pedestrian ingress and egress areas or other Improvements located upon the Shared Common Areas, without the prior written consent of Declarant. Notwithstanding the foregoing:

(a) With the consent of Declarant, which shall not be unreasonably withheld, an Owner (or the Manager or Declarant) shall have the right to excavate or conduct construction activities upon the Shared Common Areas, 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 5.2(b); provided, 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 Shared Common Areas 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. Notwithstanding the foregoing, however, any work performed pursuant to this Section shall be performed so as to minimize the disruption of business operations conducted anywhere within the Project.

(b) Declarant may make or permit to be made alterations in the Shared Common Areas as it shall deem appropriate or necessary or appropriate.

5.4 Underground Supports. In order to accommodate the construction, reconstruction or repair of any 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 adjacent Parcel and for the benefit of the Owner of each of the other adjacent Parcel, and their respective successors, assigns and Permittees, 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 Building or other 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. In the event of any termination of this Declaration, this easement shall continue in effect perpetually as long as the Improvements utilizing the easement exist, including a reasonable period to permit reconstruction or replacement of such 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.

5.5 Taxes and Maintenance Costs for Project Common Areas.

(a) Declarant shall maintain, or cause to be maintained, the Project Common Area. Declarant may delegate the obligation to maintain any part or all of the Project Common Area to a Manager or the Master Association.

(b) 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 Common Areas that are subject to Taxes.



(c) Declarant shall have the right to collect from the Owners of all Parcels or, if an interest in a full Parcel shall be vested in more than one Person, from the Approving Representative with respect to such Parcel, the Parcel's share of any Taxes and Maintenance Costs with respect to the Project Common Area. Each Parcel's share shall be determined by Declarant, in its reasonable determination. Declarant may invoice such Owners or Approving Representatives, as applicable, monthly or quarterly, based upon estimates, plus an administrative fee equal to fifteen percent (15%) of all such Taxes and Maintenance Costs. Declarant or Manager shall collect from such Owners or Approving Representatives, as applicable, the Parcel's share of Taxes and Maintenance Costs on the Project Common Areas based upon estimates of such share (as estimated by Declarant). The Owner and Approving Representatives shall pay its respective share (as estimated by Declarant on the first (1st) day of each month or quarter (as determined by Declarant) throughout the Term of this Declaration. Declarant may periodically adjust the estimated amount. If the Taxes and Maintenance Costs are collected based upon estimated amounts, then following the end of each calendar year, Manager shall furnish such Owners or Approving Representatives, as applicable, with a statement covering the year just expired showing the total Taxes and Maintenance Costs for the Project Common Areas for such year, the total Taxes and Maintenance Costs payable by such Owner or Approving Representatives, as applicable, for such year, and the payments previously made by such Owners or Approving Representatives, as applicable, with respect to such year, as set forth above. If the actual Taxes and Maintenance Costs payable for such year exceed the prior payments by such Owners or Approving Representatives, as applicable, such Owners or Approving Representatives, as applicable, shall pay to Declarant or Manager the deficiency within ten (10) days after its receipt of the statement. If such payments exceed the actual Taxes and Maintenance Costs payable for that year, such Owners or Approving Representatives, as applicable, shall be entitled to offset the excess against the next payment(s) of Taxes and Maintenance Costs that become due under this Declaration. If or to the extent the such Owners or Approving Representatives, as applicable, do not pay the entire amount of such invoice within thirty (30) days, then: (i) a Late Charge shall be added to the amount of the invoice on the thirty-first (31<sup>st</sup>) day; (ii) the unpaid balance shall thereafter accrue interest at the Default Rate per annum; (iii) Declarant may file a Notice of Assessment Lien in accordance with Article VIII with respect to the Parcel of such non-paying Owner or the Approving Representatives or the interest of each Person owning or holding an interest such Parcel, as applicable; and (iv) Declarant may pursue all remedies available pursuant to this Declaration.

(d) Only Declarant shall have the right to contest the Taxes with respect to the Project Common Areas. An Owner (or any other Permittee, if such Permitted has the right under its lease or occupancy agreement to contest Taxes) shall only have the right to contest the amount of Taxes owing with respect to its Parcel on which Shared Common Areas are located with the consent of Declarant, which consent may be withheld for good reason. In all events the Owner (or other Permittee described above) protesting such Taxes 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 Parcel within the Project upon which any Shared Common Areas are located, including, immediately following the written request of Declarant, paying the taxes under protest and seeking a refund or recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

**5.6 Right of Declarant to Pay Taxes on Parcels on which Shared Common Areas are Located.** If any Owner shall fail to pay prior to delinquency the Taxes on any Parcel on which Shared Common Areas are located, Declarant or the Master Association may pay such Taxes and Declarant or the Master Association, as applicable, may then bill the defaulting Owner for the amount expended. If the defaulting Owner shall not pay such bill within thirty (30) days, the payor shall have a lien on the defaulting Owner's Parcel for the amount of such bill, which amount shall bear interest at the Default Rate until paid and a Late Charge. Such lien may be foreclosed Declarant or the Master Association, as applicable, as provided in Article VIII below.

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

**5.8 Maintenance of Shared Common Areas.** The Owner or Approving Representative, as applicable, of the Parcel shall be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Shared Common Areas. Such obligations shall include, without limitation, the following:

- (a) Resurfacing of drive areas;
- (b) Keeping the surface of the drive areas within the 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 Common Area drainage facilities and all other tasks necessary to maintain the Common Areas of a Parcel in a clean, safe and orderly condition;
- (d) Maintenance of all curbs, 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 (without any liability therefor) reasonably deems the same to be necessary or advisable;
- (h) Illumination of the subject Shared Common Areas until such time as Declarant reasonably determines; and

(i) Maintenance of all utility lines within the subject Shared Common Areas that are not the responsibility of the utility company or the responsibility of another Person pursuant to applicable matters of record.

**5.9 Takeover of Maintenance.** If an Owner or Approving Representative, as applicable, of a Parcel shall fail to operate, manage, equip, light, repair, replace and/or maintain the Shared Common Areas as required by this Declaration, or otherwise fail to operate such Shared Common Areas pursuant to the other requirements and standards set forth in this Declaration, then Declarant shall have the right (but not the obligation), by giving such Owner or Approving Representative 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 Shared Common Areas; provided, however, in the event such Owner or Approving Representative 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 or Approving Representative promptly undertakes such remedial actions and diligently pursues such remedial actions to completion), Declarant shall not have the right to take over, or cause to be taken over, the operation, maintenance, repair and replacement of the Shared Common Areas on account of such breach. 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 Shared Common Areas (or portions thereof), Declarant or a designee appointed by Declarant shall thereafter so operate, maintain, repair, replace and otherwise perform such Owner's or Approving Representative's obligations with respect to the subject Shared Common Areas (or relevant portions thereof) in the same manner and subject to the same standards as required of such Owner or Approving Representative under this Declaration. In such event, such Owner or Approving Representative (and each Person owning or holding an interest in the applicable Parcel) shall be responsible for any and all costs incurred by 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 or Approving Representative with respect to such Shared Common Areas, which costs shall be paid by such Owner or Approving Representative to Manager, Declarant or such designee (as the case may be) periodically, as billed by such Person, within thirty (30) days following such billing. If such Owner or Approving Representative 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 or Approving Representative (and the interest of each Person owning or holding an interest in the applicable Parcel) for the amount of such bill, which amount shall bear interest at the Default Rate and any Late Charge, which lien may be foreclosed as provided in Article VIII.

**5.10 Delegation to Managers.** Declarant may delegate any maintenance or administrative responsibility under this Declaration to a Manager or Managers.

**5.11 Grant of Easement for Parking Facilities.** In accordance with the terms of the Development Agreement, Declarant hereby establishes and grants, and each other Person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, shall be deemed to have established and granted, to the Master Association, an irrevocable, non-exclusive perpetual easements and right-of-way over, across, upon the Parking Facilities to use or allow the County to use for parking purposes for evening and weekend events of the County or another governmental entity after normal operating hours of the Owner or its Permittees.

VI.

**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 Improvements to Shared Common Areas) owned or leased by such Owner, a policy or policies of commercial general liability, bodily injury, personal injury and property damage liability insurance insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other Improvements (including the Shared Common Areas) located on the property within the Project owned or leased by such Owner. Such insurance shall have a combined single limit of at least Three Million Dollars (\$3,000,000), provided that such insurance limit shall be increased (but in no event decreased) and on each Adjustment Date throughout the duration of this Declaration, by the percentage increase in the Index (the increased insurance limits shall be 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); provided further that such insurance limit shall be increased to such limit as Declarant shall reasonably establish from time to time. Such insurance policy shall include an appropriate endorsement naming the Manager, Declarant, any Mortgagee of Declarant and any property manager of Manager or Declarant as additional insureds. Each Owner shall also maintain all-risk insurance coverage on all Buildings and Improvements located upon its Parcel or Parcels 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. 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.

6.2 **Certificates.** Each Owner shall, upon request thereof from the Manager, Declarant or any other Owner, furnish to the Person 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 or Action 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 or Action by way of subrogation (or otherwise) to an insurance company (or any other Person) 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 Declarant, Manager, or any other Owner or Permittee 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, Declarant, Manager, the Owner(s) and/or Permittee(s) giving the notice of default may do so and the curing Owner or Permittee 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 Permittee 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 plus any Late Charge. Such lien may be foreclosed as provided in Article VIII.

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 and Actions:

(a) 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 and Actions caused by the negligence or wrongful act or omission of such Indemnitees, its agents, servants, partners or employees; or

(b) Arising from any work performed on another Parcel pursuant to any provision of this Declaration.

6.4 Mechanic's Liens. To the fullest extent permitted by law, each Owner which performs work on any Parcel, shall indemnify, defend and hold harmless Declarant, the Master Association and each other Owner from and against any and all Claims and Actions directly or indirectly arising out of the design, construction, use, operation, maintenance, repair, security and any activities whatsoever in connection with such work including, without limitation, all liens or charges of mechanics and materialmen.

## VII.

### MASTER ASSOCIATION

7.1 Master Association—Membership and Board. Except for Development Rights and other rights retained or reserved by Declarant, this Declaration will be managed, implemented, and enforced by and through the Master Association. Except as required by law or the Governing Documents, the Master Association will be managed by a Board of Directors (the "Board"). The initial Board will consist of three (3) members. During the period that the Master Association is not the Declarant, Declarant shall have the right to appoint each member of the Board. If the Master Association becomes the Declarant, then the existing Board will be dissolved and its members shall be elected as provided in the Bylaws.

7.2 Master Association Powers. As provided more fully in the Articles and Bylaws, as amended from time to time, the Master Association, acting through the Board, shall have

powers consistent with the intent and purposes of this Declaration to perform functions to benefit some or all of the Owners, as provided for in the Governing Documents. Without limiting these general powers, the Master Association, acting through the Board, shall have the specific power to, in its sole discretion, to exercise all rights and privileges granted to it pursuant to this Declaration and do any and all of the following in connection with this Declaration:

- (a) enter into contracts or agreements with third Persons;
- (b) employ staff, contractors, accountants, legal counsel, or other consultants as the Board deems desirable; and
- (c) levy and collect Assessments as provided in this Declaration.

**7.3 Governing Documents.** The Master Association shall be governed by the Governing Documents, as all of the same may be amended from time to time. Copies of the Governing Documents then in effect (as amended) shall be made available to all Owners at the Master Association offices during normal business hours.

**7.4 Assent, Ratification and Approval.** All Owners shall be deemed to have assented to, ratified and approved the general purposes of this Declaration and the power, authority, management responsibility and designation of the Master Association, acting through the Board as permitted under this Declaration.

**7.5 Indemnification.** To the fullest extent permitted by law, each officer of the Master Association and member of the Board shall be and is hereby indemnified by the Master Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such officer or director in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been an officer or director of the Master Association, or any settlements thereof, whether or not he or she is an officer or director of the Master Association at the time such expenses are incurred. This indemnification shall not apply in cases where an officer or director is adjudged guilty of wrongful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, the indemnification provided for in this Declaration shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Master Association.

## VIII.

### COVENANT FOR ASSESSMENTS

**8.1 Assessments - Authorization and Covenant.** The Master Association is hereby authorized to levy Assessments on the Parcels, on an as-needed basis, for the purpose of funding the implementation and enforcement of this Declaration including, without limitation;

- (a) Funds to pay Taxes and Maintenance Costs on the Project Common Areas in accordance with Section 5.5 or as to Project Common Areas conveyed or dedicated to Governmental Authorities but maintained by the Master Association or Declarant;

(b) Funds to pay Taxes and Maintenance Costs on the Shared Common Areas maintained by the Master Association in accordance with Section 5.8;

(c) Funds to pay the obligations of the Master Association to adjoining land owners, canal or irrigation companies and other Governmental Authorities representing for services or use of property that benefits the Project;

(d) Funds to pay the cost of all water used in connection with the Common Areas and paid by the Master Association; and

(e) Funds to pay the cost of retaining legal, engineering, accounting and other professional services as needed

Unless otherwise provided in the Bylaws, the Master Association shall provide written notice of the levy of an Assessment to each Owner being assessed as provided in Sections 13.11 and 13.12.

**8.2 Statements of Account.** The Master Association shall furnish to any Owner, upon written request, delivered personally or by certified mail, first class, postage prepaid, return receipt requested, to the Master Association's registered agent, a written statement setting forth the amount of all unpaid Assessments, if any, currently levied against such Owner's Parcel. The statement shall be furnished within ten (10) business days after receipt of the request and shall be binding on the Master Association, the Board, and every Owner.

**8.3 No Exemptions, Offsets, or Reductions.** No Owner may become exempt from liability for payment of any Assessment to the Master Association by abandonment of Owner's Parcel, by the failure or alleged failure of the Owner or any Permittees of the Parcel to receive direct benefits related to any Assessment, or by operation of any form of waiver, including waiver of the Owner's right to vote or the Owner's use or enjoyment of common facilities. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason, including, without limitation, any Claim or Action that the Master Association or the Board or any other Person is not properly exercising its duties and powers under this Declaration.

**8.4 Personal Obligation to Pay Assessments.** The Owner of any Parcel shall be deemed to covenant and agree to pay, in a timely manner, any and all Assessments as imposed by the Master Association pursuant to this Declaration. Assessments provided for in this Declaration, including charges, Late Charges, attorneys' fees and interest at the Default Rate charged by the Master Association shall be the personal obligation of the Owner of such Parcel at the time when the assessment or other charges become due.

**8.5 Creation of Lien; Enforcement.** In the event an Owner or Permittee of a Parcel shall be delinquent in paying any amounts due hereunder and, as a result thereof, Declarant or Master Association may record a Notice of Assessment Lien 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 or Permittee 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

recording 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. Upon recording of such Notice of Assessment Lien with the Recorder, the then delinquent amount owing by such Owner, together with interest thereon at the Default Rate and any applicable Late Charge, shall constitute a lien upon the Parcel or Parcels 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 with the Recorder, 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 Parcel or Parcels by taking any or all 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 Owners or Permittees personally obligated to pay the assessment or other sum of money;
- (b) Foreclosing the Assessment Lien against the Parcel or Parcels 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 available at law or in equity.

**8.6 Priority.** The Assessment Lien and any other liens or charges provided for in this Declaration shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon any Parcel; provided, however, that such Assessment Lien and any other liens or charges provided for in this Declaration 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 with the Recorder (and such other place as may be required or permitted by law), prior to the date of recording with the Recorder of a Notice of Assessment Lien. All Mortgages recorded subsequent to the recording of a Notice of Assessment Liens shall be junior and subordinate to the Assessment Lien; and
- (c) The rights of any and all Permittees occupying or using part or all of any Parcel under written leases.

**8.7 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 at the Default Rate and Late Charges, as such Person shall have incurred.



8.8 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 Parcel or Parcels 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.

## IX.

### GENERAL RESTRICTIONS

9.1 Safety and Security. Each Owner and Permittee shall be responsible for its own personal safety and the security of its property and person while within the Project. Declarant, and the Master Association and their respective officers, employees, agents, boards and committees shall not be considered insurers or guarantors of safety or security within the Property, nor shall they or any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing its Permittees that Declarant and the Master Association and their respective officers, employees, agents, boards and committees are not insurers or guarantors of security or safety and that each Person within the Project assumes all risks of personal injury and loss or damage to property, including Parcels and Improvements, resulting from acts of third Persons or latent defects or conditions with respect to the Property or Improvements.

9.2 Access. Each Owner hereby covenants and agrees to provide Declarant and the Master Association and their respective officers, employees, agents, boards and committees, and the County, with full right of access to all Parcels owned or occupied by such Owner, Permittees or other Person to the extent such access is required to implement and enforce this Declaration or Governmental Requirements.

9.3 Changes in Circumstances Anticipated. Declarant has promulgated a Master Plan in accordance with the Development Agreement; provided, however, that in all cases and events such Master Plan shall be subject to the right of Declarant and the Master Association to amend the Master Plan to respond to changes in circumstances, conditions, needs and desires within the Property, except as expressly provided for in this Declaration.

9.4 Owner Acknowledgment. Each Owner and Permittee is subject to this Declaration and the covenants and restrictions contained in this Declaration. By acceptance of a deed, or other instrument establishing title, ownership or other interest, each Owner and Permittee acknowledges that such Owner and Permittee has been given notice of this Declaration and that use of a Parcel is subject to the provisions of this Declaration.

9.5 Restrictions on Subordinate Covenants, Maps and Planned Parcel Developments. With regard to all of the Parcels, or unless otherwise agreed by Declarant, the prior written consent of Declarant shall be required before any development plan or agreement, map, plat or re-subdivision may be executed, finalized or filed of record against all or any portion of a Parcel.

In the event an Owner records covenants against all or any part of a Parcel without the written consent of Declarant required by the provisions of this Section, or in the event an Owner records any development plan or agreement, map, plat or re-subdivision affecting or recorded against all or any part of any Parcel without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed void upon recording a notice to that effect by Declarant.

**9.6 Right of Owners Regarding Rules and Regulations.** With regard to the Parcels, or unless otherwise agreed by Declarant or the Master Association may adopt, amend or repeal rules and regulations concerning and governing the Project in furtherance of the purposes of this Declaration and may establish and enforce reasonable penalties for the infraction thereof.

**9.7 Construction Use.** It is expressly permissible for Declarant and Owners to, consistent with the requirements of this Declaration or the Governing Documents, perform construction and such other reasonable activities, and to maintain upon Parcels such facilities as deemed reasonably necessary or incidental to the construction and sale of Improvements on the Parcels in the development of the Property, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model facilities, temporary sales offices, parking areas and lighting facilities.

## X.

### MASTER ASSOCIATION INSURANCE

**10.1 Insurance Coverage.** The Master Association may, at its discretion, obtain and maintain in effect any insurance coverage it deems necessary to effectuate the purposes of this Declaration including, without limitation, insurance with respect to the Project Common Area.

**10.2 Waiver of Claims and Actions Against Master Association.** The Master Association and the Owners hereby waive and release all Claims and Actions against one another, the officers, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said Persons.

**10.3 Adjustments by the Master Association.** Any property or casualty loss covered by an insurance policy described above shall be adjusted by the Master Association, and the insurance proceeds for that loss shall be payable to the Master Association. The Master Association shall hold any insurance proceeds in trust for the Master Association and the Owners.

**10.4 Condemnation and Hazard Insurance Allocations and Distributions.** In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the Persons with interests and rights are determined or allocated by record.

**10.5 Cooperation with Declarant.** Each Owner and Permittee shall cooperate with Declarant and Master Association to effect the provisions of this Article X.

**XI.**

**RESERVED DEVELOPMENT RIGHTS**

11.1 Reserved Development Rights. Declarant expressly reserves for itself and its successor Declarants, and Boyer Snyderville I grants to Declarant and any successor Declarants, the following Development Rights; provided that these rights are discretionary with Declarant and nothing in this Article shall be construed to impose any affirmative obligation upon Declarant:

(a) The right to add and remove tracts of land to the Property (whether owned by Declarant or other Persons), subject to this Declaration, and divide such additional land into Parcels;

(b) The right to subject Parcels owned by Declarant to additional covenants, conditions, terms and restrictions, as Declarant may determine;

(c) The right to subject Parcels owned by any other Owner to additional covenants, conditions, terms and restrictions with the written consent of such Owner;

(d) The right to relocate boundaries between adjoining Parcels, enlarge Parcels, enlarge or reduce or diminish the size of Parcels, subdivide Parcels, or complete or make, or cause to be completed or made, Improvements on Parcels, to the extent such Parcels are owned by Declarant and/or such action is accomplished with the written consent of the Owner;

(e) The right to amend the Declaration, Site Plan, maps or plats in connection with the exercise of any Development Right;

(f) The right to make amendments to the Declaration, Bylaws or Articles to meet or comply with any requirement of FHA or VA or other applicable law;

(g) The right to amend the Governing Documents, as expressly provided in this Declaration;

(h) The right to maintain (or to permit other Persons to maintain) signs, sales offices, mobile offices, temporary Buildings, parking lots, management offices and models on Parcels of Declarant or of any consenting Owner;

(i) The right to maintain (or to permit other Persons to maintain) signs and advertising on the Property at any location; provided that such signs and advertising do not interfere with the physical use of the Parcel on which the sign or advertising is located by the Owner of such Parcel;

(j) The right to advertise the Property or other communities developed or managed by, or affiliated with Declarant;

(k) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions;

(l) The right to perform or cause to be performed warranty work, repairs and construction work and to store materials in secure areas, in Parcels and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed on a Parcel without the consent or approval of any Owner or Mortgagee of the Parcel. Declarant expressly reserves for itself and its successor Declarants, and Boyer Synderville 1 expressly grants to Declarant and any successor Declarants, such easement through the Property as may be reasonably necessary for exercising reserved rights in this Declaration;

(m) The right to exercise any additional reserved right created by any other provision of this Declaration; and

(n) Any rights created or reserved under this Article for the benefit of Declarant, for the express benefits of an Owner, may be transferred to any Person by an instrument describing the rights transferred recorded in the real property records of the appropriate county. Such instruments shall be executed by the transferor and the transferee. The rights transferred may then be exercised without the consent of the Master Association, any Owner or any Mortgagee.

#### 11.2 Additional Provisions Relating to Development Rights.

(a) Except as expressly set forth in Section 11.1, the consent of Owners or holders of security interests shall not be required for exercise of any Development Rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any Development Rights on all or any Parcels in whatever order determined.

(b) The recording with the Recorder of amendments to the Declaration and the map or plat pursuant to Development Rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, upon the recording of an amendment to the Declaration with the Recorder, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded and to any additional Improvements, and the same shall be added to and become a part of the Property for all purposes. Reference to the Declaration plat or map in any instrument shall be deemed to include all amendments to the Declaration, plat or map without specific reference thereto.

(c) The rights reserved to Declarant, and its successors and assigned, shall not expire unless terminated by written instrument executed by Declarant and recorded with the Recorder.

(d) Additions of Parcels to the Property may be made by Persons other than Declarant, or its successors and assignees or Owners, upon approval of Declarant. Such

approval shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, recorded with the Recorder.

## **XII.**

### **COMPLIANCE AND ENFORCEMENT**

#### **12.1 Compliance and Enforcement.**

(a) Every Owner and Permittee with respect to a Parcel shall comply with this Declaration and Governing Documents.

(b) Declarant or, after the Master Association becomes Declarant or otherwise with the prior written consent of Declarant, the Master Association, acting through the Board, may enforce all applicable provisions of this Declaration and the other Governing Documents. When a Person other than the Master Association is acting as Declarant, such Person may delegate to the Master Association the right, in whole or in part, to enforce this Declaration or parts thereof, and may revoke any such delegation. Without limiting other remedies available at law, Declarant or Master Association, as applicable, may levy Assessments to cover costs incurred by the Master Association to bring a Parcel into compliance with this Declaration and the other Governing Documents. No Owner or Permittee may enforce the provisions of this Declaration.

(c) In addition, Declarant or the Master Association, as applicable, may take the following enforcement procedures to ensure compliance with this Declaration and the other Governing Documents:

(i) exercising self-help in any emergency situation or situation requiring immediate compliance with Governmental Requirements; or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) All remedies set forth in this Declaration or the other Governing Documents shall be cumulative of and in addition to any remedies available at law or in equity.

(e) In any action to enforce this Declaration or the other Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. Any recovery against Declarant shall be paid by the Master Association and shall be assessable to the Owners.

(f) The decision to pursue enforcement action in any particular case shall be left to the discretion of Declarant or Master Association, as applicable, except that Declarant or Master Association, as applicable, shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, Declarant or Master Association, as applicable, may determine that, under the circumstances of a particular case:

(i) The position of Declarant or Master Association, as applicable, is not strong enough to justify taking any or further action;

(ii) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Master Association's resources to enforce; or

(iv) That it is not in the best interest of the Project, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver or estoppel of any right or remedy of Declarant or the Master Association, as applicable, or prevent Declarant or the Master Association, as applicable, from enforcing such provisions at a later time under other circumstances.

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

### XIII.

#### GENERAL PROVISIONS

13.1 Successors and Assigns; Run with the Land. Except as expressly limited by this Declaration, each and every agreement, easement, Restriction and covenant contained in this Declaration shall be appurtenant to and for the benefit of all Parcels and shall be a burden thereon, for the benefit of all Parcels, and shall run with the land as to each Parcel. This Declaration and the Restrictions, easements, covenants, benefits and obligations created hereby run with the land as to each Parcel and shall inure to the benefit of and be binding upon Declarant, Boyer Snyderville 1, Manager, Owners and their respective successors, transferees and assigns; provided, however, that, if any Owner conveys or 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 such conveyance or transfer is recorded with the Recorder.

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

13.3 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.

13.4 No Merger. The ownership of the entire Project by the same Person shall not result in the termination of this Declaration by operation of the doctrine of merger or any similar legal doctrine.

13.5 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.

13.6 Remedies. Declarant or, if Declarant so determines, the Manager may prosecute any proceedings at law or in equity against any Person violating or attempting to violate any of the agreements, covenants, conditions and restrictions of this declaration, 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 an Assessment Lien against the real property or the interest therein in the Project belonging to such party as provided in Article VIII, which the prevailing party may foreclose in the manner provided in such Article VIII. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

13.7 No Third Party Beneficiary. Except as herein specifically provided in this Declaration, no rights, privileges or immunities set forth herein shall inure to the benefit of any Owner or Permittee with respect to any Parcel, nor shall any Owner or Permittee be deemed to be a third party beneficiary of any of the provisions contained herein.

13.8 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 Parcel 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 Improvements to Shared Common Area (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 portion of the Common Areas or on account of the subject restoration or repair.

13.9 Consent. Unless otherwise set forth herein, any approval or consent required or requested of 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 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.

13.10 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 a Parcel (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).

13.11 Notices. Subject to Section 13.12, any notice, demand, request or other communication required or permitted to be given by an Owner or Permittee to another Owner or Permittee hereunder shall be in writing, signed by the Person 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 Owners as registered in writing with Declarant (or, if the Master Association is Declarant, the Master Association), until such addresses are changed as hereinafter provided. The Manager shall make all addresses furnished by any Owner to Declarant (or, if the Master Association is Declarant, the Master Association) pursuant to this Section available to any Owner or Permittee who shall so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to Declarant (or, if the Master Association is Declarant, the Master Association) 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.

13.12 Approving Representative. Notwithstanding anything to the contrary in this Declaration, if, at any time, that an interest in a full Parcel, or portions thereof, shall be vested in more than one Person, then the Persons owning or holding interests such Parcel shall be required to designate in a written notice to the Declarant one Person to receive all notices, pay all Assessments, and give all necessary consents and approvals required by the terms of this Declaration with respect to all of the Owners of such Parcel (an "Approving Representative"). The Approving Representative must be one of the following Persons: (i) if there is no owners' or condominium association, the Approving Representative shall be one (1) Person which is the owner or holder of some interest in such Parcel; (ii) if there is an owners' or condominium association with respect to such Parcel, then the only Person that may be the Approving Representative shall be the owners' association or condominium association, as applicable. The name and contact information of the Approving Representative shall be provided to Declarant in writing in a manner reasonably satisfactory to Declarant. Whenever notice is to be provided to



the Owners of such Parcel under this Declaration, the Declarant or Person giving such notice may deliver such notice only to the designated Approving Representative and need not give notice to any other Person. Whenever the consent, approval or payment of the Owners of such Parcel is required under this Declaration, the Declarant or any other Person may rely on the consent, approval or payment of the designated Approving Representative and the Declarant or such other Person need not obtain the consent, approval or payment of any other Person. The Approving Representative shall have absolute discretion to make the decisions on behalf of the entire Parcel. In the event the name and contact information of an Approving Representative is not properly provided to Declarant, Declarant shall not be held liable for failure to provide notice to or seek approval from such Approving Representative or the Owners of the applicable Parcel. Declarant may rely on the name and contact information of the Approving Representative provided to Declarant, regardless of whether the information is, in fact, incorrect or is disputed by the Owners of the applicable Parcel. Declarant is under no duty to verify the authority or power of the Approving Representative or any other information given to Declarant regarding the Approving Representative. Each Owner of an interest in a Parcel owned by more than one Person agrees to indemnify, defend, and hold harmless Declarant in the event the Declarant contracts with, or gives notice to, a designated Approving Representative and that Approving Representative, for any reason, is not, or is disputed to be, the Approving Representative designated by such Owners.

13.13 Estoppel Certificates. Declarant (or, if the Master Association is Declarant, the Master Association) shall deliver to any Owner, with payment of a reasonable charge established by Declarant or the Master Association to cover cost of issuance, within thirty (30) 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).

13.14 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.

13.15 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any Person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

13.16 Amendment of Declaration by Owners. With the exception of Article XI, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time with the written consent of the Master Association and, if the Master Association is a Person other than Declarant, Declarant. Any amendment of this Declaration shall become effective upon the recordation by Declarant with the Recorder of a certificate setting forth the amendment in full and certifying that the

amendment has been approved as set forth above. Notwithstanding any other provision of the Declaration, neither Declarant nor the Master Association may amend this Declaration to expand the powers of Declarant or Master Association beyond those expressly granted herein with respect to property owned by an Owner without the consent of the Owner.

13.17 Validity of Amendments. Any action to challenge the validity or enforceability of an amendment of this Declaration must be brought within one (1) year after the amendment is recorded with the Recorder.

13.18 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes set forth in the recitals of this Declaration.

13.19 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employed in connection with any Parcel, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

13.20 Singular Includes the Plural; References to Parts and Sections. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter. When a reference is made to an Article or Section by number, the reference shall be deemed to refer to the correspondingly numbered Article or Section in this Declaration unless the context requires otherwise.

13.21 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, Section or Article of this Declaration.

13.22 Recitals; Exhibits. The Recitals and the Exhibits to this Declaration are an integral part of this Declaration and are hereby incorporated by this reference.

**[REMAINDER OF THIS PAGE LEFT BLANK]**

EXECUTED by the Parties as of the date first set forth above.

**"DECLARANT"**

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

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

By: \_\_\_\_\_

Name: Devon Glenn

Its: Manager

STATE OF UTAH

) ss.

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2012, by Devon Glenn the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of Boyer Snyderville Junction, L.C., a Utah limited liability company.



Sara Bergen  
\_\_\_\_\_  
Notary Public

My Commission Expires:

April 4, 2016

Residing at:

Salt Lake

**"BOYER SNYDERVILLE 1"**

BOYER SNYDERVILLE 1, L.C., a Utah limited liability company, by its Manager:

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

By: \_\_\_\_\_  
Name: Devon Glenn  
Its: Manager

STATE OF UTAH )  
                          )  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2012, by Devon Glenn, the Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of Boyer Snyderville 1, L.C., a Utah limited liability company.



Sara Bergen  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
April 4, 2016

Residing at:  
Salt Lake

**EXHIBIT "A"  
TO  
MASTER DECLARATION FOR PARK CITY TECH CENTER**

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**Site Plan**

# Exhibit A Master Declaration

**OWNER'S DECLARATION**

I, the undersigned, being the owner of the above described property, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Date: \_\_\_\_\_

**PARK CITY TECH CENTER SUBDIVISION**

LOCATED IN THE NORTHEAST QUARTERS OF SECTION 14,  
TOWNSHIP 13 NORTH, RANGE 120 WEST, COUNTY OF SUMMIT,  
STATE OF UTAH

**OWNER'S DECLARATION**

I, the undersigned, being the owner of the above described property, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Date: \_\_\_\_\_

**PARK CITY TECH CENTER SUBDIVISION**

LOCATED IN THE NORTHEAST QUARTERS OF SECTION 14,  
TOWNSHIP 13 NORTH, RANGE 120 WEST, COUNTY OF SUMMIT,  
STATE OF UTAH

**CONSENT OF LIENHOLDER**

WELLS FARGO BANK, NATIONAL ASSOCIATION (the "**Lender**"), as the holder of a lien encumbering certain real property (the "**Property**") arising under each of the following:

1. That certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 3, 2010, granted by Boyer Synderville Junction, L.C., a Utah limited liability company, for the benefit of the Lender and recorded in the official records of Summit County, Utah, on November 29, 2010 as Entry No. 00912019; and,
2. That certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of December 20, 2011, granted by Boyer Synderville I, L.C., a Utah limited liability company, for the benefit of the Lender and recorded in the official records of Summit County, Utah, on January 17, 2012 as Entry No. 00937755,

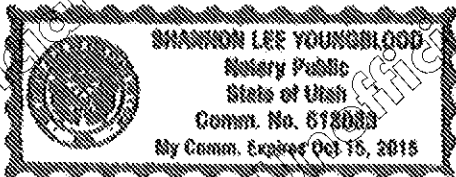
consents to the recording of the foregoing Master Declaration For Park City Tech Center (the "**Declaration**") and agrees that the Declaration will remain in full force and effect if the Lender acquires title to the Property by foreclosure, a trustee's sale or deed in lieu thereof.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *Michael Asay*  
 Name: Michael Asay  
 Its: Vice President

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

The foregoing instrument was acknowledged before me this 16th day of July, 2012, by Michael Asay, the Vice President of Wells Fargo Bank, National Association.



*Shannon Lee Youngblood*  
 Notary Public

My Commission Expires:  
10/15/2015

Residing at:  
566 1st