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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
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**DECLARATION  
OF  
PROTECTIVE COVENANTS, AGREEMENTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
NINIGRET TECHNOLOGY PARK WEST**

**THIS DECLARATION OF PROTECTIVE COVENANTS, AGREEMENTS, EASEMENTS, CONDITIONS AND RESTRICTIONS** (the "Declaration") is made this \_\_\_  
th day of August, 2005, by Ninigret Technology West, L.C., a Utah limited liability company  
(hereinafter referred to as "Grantor").

**WITNESSETH:**

**Whereas**, Grantor is the fee simple owner of certain real property commonly known and  
identified as Ninigret Technology Park West, and particularly described on Exhibit A attached  
hereto (hereinafter the "Property");

**Whereas**, Grantor intends itself to own and develop portions of the Property and/or to  
convey portions of the Property to other persons or entities for development, all in accordance  
with certain covenants, agreements, easements, conditions and restrictions as are contained in  
this Declaration (together the "Protective Covenants") pertaining to the ownership and  
development of the Property;

**Whereas**, Grantor is desirous of subjecting the Property to the Protective Covenants  
hereinafter set forth, each and all of which is and are for the benefit of said Property and for the  
Grantor and each subsequent owner and occupant of any portion of the Property; and

**Whereas**, Grantor has deemed it advisable that it should create a Committee (the  
"Committee"), consisting of representatives chosen by the Grantor until such time as the earlier  
of 40 years from the date hereof or the sale by Grantor of 95% or more of the overall acreage of  
the Property, which Committee shall have overall responsibility for implementation and  
enforcement of such Protective Covenants by declaring itself the entity to provide for the power  
of, and responsibility for, administering the terms of the Protective Covenants by approving the  
prospective plans of an owner to develop portions of the Property.

**DECLARATION:**

**Now, therefore**, Grantor does hereby proclaim, publish and declare that the Property is  
and shall be held, owned, transferred, sold, conveyed, hypothecated, leased, subleased, occupied  
and improved in accordance with and subject to the Protective Covenants hereinafter set forth,  
which Protective Covenants shall run with the land and be binding upon the Grantor and upon all  
parties having or acquiring any right, title or interest in and to any part of the Property, and shall  
inure to the benefit of each and every owner or owners of all or any part of the Property.

## ARTICLE 1 DEFINITIONS

"Affiliate" shall mean, when used with reference to a specified person or entity, any person that directly or indirectly controls, is controlled by or is under common control with the specified person or entity.

"Back of Curb" shall mean the farthest edge of a Street curb adjacent to a Street, which in most cases will be either ten (10) feet or eleven (11) feet from the boundary line of a Building Site depending upon applicable governmental regulation.

"Building" shall mean and include, but not be limited to, any structure built for permanent use on a Building Site, and all projections or extensions thereof, including but not limited to garages, outside platforms and docks, storage tanks, carports, canopies, enclosed malls and porches, sheds, tents, mailboxes, radios or TV antenna, fences, signboards or any other temporary or permanent improvement to such Building Site.

"Building Site" shall mean a tract of real property, or any subdivision thereof, within the Property that may, as allowed by this Declaration and existing and applicable zoning and land use regulations, have built thereon a building or buildings. If fee simple title to two (2) or more adjacent Building Sites, as defined hereinabove, is acquired by the same Owner, such commonly owned Building Sites may, at the option of said Owner, be combined and treated as a single Building Site for the purposes of this Declaration, provided that the location of the Improvements on such combined Building Site shall be subject to the prior written approval of the Committee.

"Committee" shall mean the committee created pursuant to the terms of Article IX hereof to perform the various tasks set forth under the terms of this Declaration.

"Declaration" shall mean this Declaration of Protective Covenants, Agreements, Easements, Conditions and Restrictions, together with all of the provisions provided herein, which shall be recorded in the office of the Salt Lake County Recorder, State of Utah, as the same may from time to time be supplemented or amended in the manner described herein.

"Deed" shall mean any deed, assignment, lease or other instrument conveying fee title or a leasehold interest in any part of the Property.

"Grantor" shall mean the entity described in the first paragraph of this Declaration, or its successors or assigns or Affiliates.

"Improvements" shall mean and include, but not be limited to, Buildings, out buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad spurs and trackage, retaining walls, roads, screening walls, Signs, utilities, and walkways located on a Building Site.

"Landscaping" shall mean a space of ground covered with lawn and/or ground cover, combined with shrubbery, trees and the like, which may be complemented with earth berms, masonry or similar materials.

"Lawn" shall mean a space of ground covered principally with grass.

"Occupant" shall mean a person or entity, including but not limited to a corporation, joint venture, partnership, trust, unincorporated organization or association or limited liability company or partnership, that, through receipt of a Deed or otherwise, has purchased, leased, rented or has otherwise legally acquired the right to occupy and use any Building, Building Site or any portion of any Building or Building Site, whether or not such right is exercised.

"Owner" shall mean a person or entity, including but not limited to a corporation, joint venture, partnership, trust, unincorporated organization or association or limited liability company or partnership, that is the record owner of any fee simple estate, or that has an equity of redemption, in all or any portion of a Building Site;

"Property" shall mean the property described in the first Whereas clause above and as more fully described on Exhibit A attached hereto.

"Protective Covenants" shall have the meaning as set forth in the second Whereas clause of this Declaration.

"Sign" shall mean and include every advertising message, announcement, declaration, demonstration, display, illustration, insignia, surface or space erected or maintained in view of the observer thereof for the identification, advertisement or promotion of the interests of any person, entity, product or service. The term "Sign" shall also include the sign structure, supports, lighting systems and any attachments, ornaments or other features used to draw the attention of observers. This definition does not include any flag, badge, or ensign of any government or governmental agency erected for and used to identify said government or governmental agency.

"Street" shall mean any public street or highway, whether presently constructed, dedicated by plat map or contemplated in the future, under a street plan approved by any public authority.

**ARTICLE 2**  
**PURPOSES OF DECLARATION;**  
**MUTUALITY OF BENEFITS AND OBLIGATIONS**

**Section 2.1** **Purposes.** The purposes of this Declaration are:

(a) to insure proper use and appropriate, adequate and reasonable development of the Property and each Building Site located thereon;

(b) to preserve and enhance the value to each Owner and Occupant of all Buildings and Building Sites;

(c) to protect against the erection of Improvements constructed of improper, unsuitable or undesirable material;

(d) to encourage the construction and maintenance of attractive, permanent Improvements that are compatible and harmonious as to appearance, function and location with Improvements situated on or planned for other Building Sites;

(e) to assure adequate off-street parking space and off-street truck loading and maneuvering facilities on the Property; and

(f) in general to provide for the orderly, aesthetic and high quality architectural and engineering development, improvement and design of the Property and each Building thereon so as to promote the general welfare of the then current and future Owners and Occupants and to enhance the property value of the Property and Improvements.

**Section 2.2 Mutuality.** The Protective Covenants set forth herein are made for the mutual benefit of each and every Owner and are intended to create reciprocal rights and obligations between the respective Owners and future Owners of all or any portion of the Property; and to create a privity of contract and estate between the grantees of said properties, their heirs, successors and assigns. The Protective Covenants shall be construed in such a manner as to cause the purposes set forth in Section 2.1 to be realized. All Property or any portion thereof, and any Buildings located on any part of the Property, shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms, conditions and provisions contained in this Declaration. Every person who is or becomes an Owner of any portion of the Property does by reason of taking such title, by Deed or otherwise, agree to all of the terms, conditions and provisions of this Declaration.

### **ARTICLE 3 POWERS, DUTIES, AND RESPONSIBILITIES OF GRANTOR**

To the extent Grantor is an Owner of any portion of the Property, Grantor shall be entitled to all of the same rights and privileges as accorded to each and every Owner pursuant to the terms and provisions of this Declaration. In addition, Grantor, its successors and assigns shall have the following powers, duties and privileges that shall pertain only to Grantor, its successors and assigns, and not to any Owner for the period of time so stated in the relevant provisions:

(a) The right to appoint the members of the Committee as described in Article IX below;

(b) The right with respect to sales of various portions of the Property as described in Section 10.5 below; and

(c) Any and all other rights specifically granted to Grantor, as opposed to an Owner, pursuant to the provisions of this Declaration.

**ARTICLE 4  
LAND USE**

Unless otherwise agreed by the Committee, the Building Sites shall be used exclusively for high quality industrial, commercial, office, distribution, warehouse, flex, research and development and/or retail purposes. The foregoing limitation shall not prevent Grantor from constructing, owning, operating, leasing or conveying real property within the Property for service facilities consistent with the purposes of this Declaration.

**ARTICLE 5  
GENERAL RESTRICTIONS, COVENANTS AND REQUIREMENTS**

The following restrictions, covenants and requirements are imposed on the Property, and on all Buildings, Improvements and Building Sites located thereon, and are binding upon all Owners and Occupants, and may be enforced against such Owners and Occupants, jointly and/or severally:

**Section 5.1. USE.** Each Building and Building Site shall be used for industrial, commercial, office, distribution, warehouse, flex, research and development, and/or retail purposes, and such other commercial purposes that are allowed by applicable zoning regulations and approved in advance by the Committee. In so using the Building and Building Site, the Owner or Occupant, as the case may be, shall at all times comply with all present and future safety, health, environmental or other laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments, departments, commissions, boards and officers, and all orders, rules and regulations of the National Board of Fire Underwriters or any other body exercising similar functions, which may be applicable to the Building and Building Site. Any Owner or Occupant, as the case may be and as to which such person has control over the particular property, shall (i) comply with all federal, state and local statutes, rules and regulations governing substances or materials identified as toxic, hazardous or otherwise damaging to person or property by reason of its chemical nature (the "Environmental Laws") and (ii) promptly notify the Committee and any other affected Owner or Occupant in the event of any discharge, spillage, uncontrolled loss, seepage, release or filtration of oil or petroleum or chemical liquids or solids, particles, liquids or gaseous products, hazardous waste or any product or byproduct of such Owner's or Occupant's operations that may constitute an environmental hazard upon, in or under the Building or Building Site or any other matter relating to the Environmental Laws as they may affect the Property.

**Section 5.2. LOCATION OF BUILDINGS.** All Buildings shall be set back from the Back of Curb on their respective Building Sites by at least ninety (90) feet from the Back of Curb in the case of any frontage boundaries to any Street, and at least thirty (30) feet from each interior (non-Street frontage) property line, except for underground Improvements such as storage tanks, which may be placed within those portions of setback areas that are not included in the thirty (30) foot landscaped areas identified in Section 5.4.

The above minimum setbacks have been established to create and preserve an attractive setting for all Buildings. However, total uniformity of setback is not necessarily desired, and

accordingly the Committee is authorized, in its sole discretion, to authorize variations from the minimums on an ad hoc basis. Any such variation must be expressly approved in writing by the Committee.

**Section 5.3. PARKING AND PARKING AREAS.** No parking shall be permitted on any Street or drive, or any place other than parking areas located upon Building Sites. Unless otherwise agreed in writing by the Committee, all driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials, curbed with concrete and screened to the extent practical with Landscaping materials.

**Section 5.4. LANDSCAPING.** Unless otherwise agreed in writing by the Committee, landscaping and irrigation shall be installed for a minimum depth of thirty (30) feet, beginning at the applicable Back of Curb on that portion of any Building Site that abuts any Streets. Owner shall also provide Landscaping and irrigation in the areas between its boundary lines and its adjacent Back of Curb. All other unimproved areas (i.e., areas that are either unpaved, un-built or un-tracked and not within the setback areas described above) shall have either Landscaping and be maintained with an irrigation system or, at the discretion of the Committee, graveled areas or other methods. Every Building Site shall be landscaped in accordance with plans submitted and approved in writing by the Committee. Landscaping (including Landscaping between such Owner's boundary line and the adjacent Back of Curb) shall be installed within ninety (90) days after completion of Building construction, or as soon thereafter as weather will permit, and shall be maintained in the manner as outlined below in Section 5.20.

**Section 5.5. FENCES.** Fence location, color, gage and type shall be subject to the written approval of the Committee, consistent with overall aesthetics, safety and quality of construction on the Property.

**Section 5.6. CURB CUTS.** Unless otherwise agreed in writing by the Committee, curb cuts for driveways shall be a minimum of twenty (20) feet from adjacent property lines, except for any driveway that is shared by adjacent Owners in which case a twelve (12) foot or greater median shall be installed to divide exit and entrance driveways along a common interior lot line.

**Section 5.7. SIGNS.**

(a) Unless otherwise agreed in writing by the Committee, all Signs shall conform to the following general requirements:

(i) Only a company name and/or company logo shall be permitted, along with such other identifying features and information as the Committee may permit.

(ii) All illumination shall be provided by a concealed source and all back-lighting shall be contained within the area of the Sign.

(iii) No neon, traveling, flashing, intermittent or similar illumination of any kind shall be permitted.

(iv) All wiring and all appurtenant electrical equipment shall be installed inside the Building, underground or within the Sign.

(v) Sizes shall be in conformance with local zoning requirements.

(b) During the period of development and prior to the completion of the principal Building on each Building Site, the Building Site shall have only one temporary construction sign. After the completion of the principal Building on each Building Site, the availability for sale or lease of all or any part of the principal Building may be advertised by only one temporary marketing sign. Each temporary sign shall conform to the standards set forth in Section 5.7(a) with respect to all signs generally and as set forth in Section 5.7(c) with respect to "Single Tenant Roadway Signs" as shown in Exhibit 5.7-1(a).

(c) (i) Each single-tenant Building may have (1) one or more signs located in proximity to the Building Site's curb-cut that is within a reasonable distance of the intersection of its principal access driveway and the abutting public street ("Roadway Sign"), and (2) one or more additional signs located either (A) between the front of the principal Building on the Building Site and such street or way ("Ground Mounted Sign") or (B) on the front surface of such Building ("Building Mounted Sign"). Any such Roadway Signs shall conform with the format and specification set forth in Exhibit 5.7-1A hereto, such Ground Mounted Sign with Exhibit 5.7-2A, and such Building Mounted Sign with Exhibit 5.7-3. The Committee shall approve the number and locations of such signs and at its discretion may allow for more than one location of any such signs particularly where the Owner may have exposure to more than one public street.

(ii) Each multi-tenant Building may have a Roadway Sign which conforms with Exhibit 5.7-1B hereto and a Ground Mounted Sign with Exhibit 5.7-2B.

(d) Each Building Site may have directional signs designating parking areas, off-street loading areas, entrances and exits and conveying similar information. All such signs shall conform to the format and specifications set forth in Exhibit 5.7-4 hereto, and if more than one principal Building is located on a Building Site, additional building identification signs may be used which conform with Exhibit 5.7-4 hereto. Two such signs that are visible from the street or from adjacent Building Sites, and a reasonable number of additional signs that are not so visible, shall be permitted on such Building Site.

(e) The Committee may from time to time make changes or modifications to the above requirements to take into account changes in technology or other considerations deemed by the Committee to be in the best interests of the Property and the Owners.

**Section 5.8. EXTERIOR CONSTRUCTION, MATERIALS AND COLORS.** All exterior walls of any Building or other Improvement must be finished with architectural masonry units, natural stone, precast concrete (including cast in place concrete tilt-up panels), aluminum or glass materials, or their equivalent, along with such other architecturally and aesthetically

suitable building materials as shall be approved in writing by the Committee. All finish material shall be maintainable and sealed as appropriate against the effects of weather and soiling. Color shall be harmonious and compatible with colors of the natural surroundings and adjacent Buildings.

**Section 5.9. TEMPORARY STRUCTURES.** No temporary Buildings or other temporary structures shall be permitted on any Building Site; provided, however, trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. The location and nature of such structures must be submitted to and approved by the Committee and shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Building Sites, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building(s) in conjunction with which the temporary structure was used.

**Section 5.10. ANTENNAS, AERIALS AND DISHES.** No antenna or device for transmission or reception of any signals, including but not limited to telephone, radio or television antenna, aerial, dish or similar facility, shall be erected or maintained on any Building or Building Site in a manner such that it is visible from five (5) feet above the ground or ground floor level at a distance of five hundred (500) feet in any direction, without the prior approval of the Committee.

**Section 5.11. UTILITIES; MECHANICAL EQUIPMENT; ROOF PROJECTIONS; ETC.**

(a) Except as may otherwise be required under applicable laws or utility company guidelines, all electrical, gas, telephone, data and water services shall be installed and maintained underground.

(b) Transformers that may be visible from any primary visual exposure area shall be screened with either plantings or a durable non-combustible enclosure (of a design configuration acceptable to Utah Power and Light). Where possible, trash enclosures shall be screened in a similar fashion for continuity.

(c) Transformer enclosures shall be designed of durable materials with finishes and colors which are unified and harmonious with the overall architectural theme.

(d) Exterior-mounted electrical and gas equipment shall be mounted on exposed surfaces only when an interior mounting is impractical. When mounted on the exterior, electrical equipment shall be mounted in a location that is substantially screened from public view. In no case shall electrical equipment be mounted on the street side or significant exposure side of any Building without the approval of the Committee.

(e) Exterior-mounted electrical equipment and conduits shall be kept to a visible minimum. Where visible, they shall be installed in a neat and orderly fashion and shall be painted to blend with their mounting backgrounds.



(f) Water towers, storage tanks, processing equipment, skylights, cooling towers, communication towers, vents and any other similar structures or equipment placed upon any Building Site shall be adequately screened from public view and from the view of other Building Sites by a screening method approved in writing by the Committee prior to the construction or erection of said structures or equipment. Physical features customary to light industrial facilities shall be identified by Owner for consideration by the Committee and shall not require screening if, at the discretion of the Committee, exposure of such features is acceptable.

**Section 5.12. LOADING AND SERVICING AREAS.** Loading doors, docks, material hauling facilities, accessory structures and servicing areas shall be screened, as much as reasonably practical at the discretion of the Committee, to minimize the effect of their appearance from public areas or neighboring sites. Moreover, loading and servicing areas shall be designed as an integral part of the Building architecture, so that the entire loading and servicing operation can be conducted within the confines of any such area. Loading areas shall not encroach into setback areas along street frontages. Off Street loading space shall be designed to include an additional area or means of ingress and egress which shall be adequate for maneuvering.

**Section 5.13. GARBAGE AND DEBRIS.** No refuse, garbage, trash, grass, shrub or tree clippings, plant waste, compost, bulk materials or debris of any kind shall be kept, stored or allowed to accumulate on any Building Site except within an enclosed structure or container approved by the Committee or unless appropriately screened from view, in a manner acceptable to the Committee, except that any refuse or storage container containing such materials and approved by the Committee, may be placed outside at such time as may be reasonably necessary to permit garbage or trash pickup or materials storage. The Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the type and appearance of permitted trash receptacles, the screening thereof by fences or otherwise, and the manner of locating the same on the Property.

**Section 5.14. ACCUMULATION OF MATERIALS; STORAGE AREAS.** Materials, supplies, merchandise, equipment, company-owned vehicles or similar items shall be stored in a location that shall be adequately screened as much as reasonably practical, at the discretion of the Committee, from the view of adjacent Buildings, public streets and pedestrian walkways by either a fence, wall, landscaping screen or similar manner, but then only if approved in writing by the Committee. Subject to the consent of the Committee, fuel and other storage tanks and coal bins shall be installed underground wherever practicable and in any event screened from public view.

**Section 5.15. UTILITIES.** Other than for street lighting, all pipes, lines and other facilities for utilities, including water, gas, sewer and drainage, and all lines and conduits of any type hereafter installed for the transmission of audio and visual signals or electricity shall be located beneath the ground or within an enclosed structure or adequately screened, except that overhead lighting and utility appurtenances may be located above ground if they are adequately screened by Landscaping or by suitable Building materials that are harmonious with the

surrounding structures, so as not to be visible from adjacent Buildings, public streets and pedestrian walkways.

**Section 5.16. MAINTENANCE OF PROPERTY.** Each Owner or Occupant shall at his or its own expense keep each Building Site owned by him or it, and all Improvements located thereon, as well as all property from the back of the street curb to such Owner's or Occupant's property, in a clean, safe, attractive and aesthetically pleasing condition, in good order and repair, including without limitation, painting and repairing and generally maintaining the exterior of all Buildings and other Improvements at such times as necessary to maintain the appearance of a first class industrial facility, maintaining (including snow removal) and repairing any parking lot and truck dock areas, road, driveway, storm sewer, utilities, or similar Improvement located within the perimeter of all such Building Sites in a manner and with such frequency as is consistent with good property management, maintaining and landscaping all Lawns, trees, grass, shrubs, flowers and other Landscaping in accordance with the requirements of Section 5.20 hereof and maintaining or repairing any utility lines that service such Owner's or Occupant's Building or Improvements to the extent such lines are not required to be maintained or repaired by Salt Lake City or any applicable utility company. The expense of any maintenance, repairs or landscaping required in this section shall be the sole expense of each individual Owner or Occupant, and the Grantor and the Committee shall in no way be responsible for any expenses related to any maintenance, repair, landscaping or improvement on any Building Site.

**Section 5.17. SOUNDS.** No exterior speakers, horns, whistles, bells or other sound devices, other than devices used exclusively for safety, security, fire prevention or fire control purposes, shall be located or used on any Building Site except to the extent permitted by the Committee.

**Section 5.18. MAINTENANCE OF DRAINAGE.** Each Building Site shall have appropriate provision for water retainage/detention as may be necessary or appropriate for the Property's overall drainage system, as determined in the reasonable judgment of the Committee. The established drainage pattern over any Building Site may not be altered except as approved in writing by the Committee. Unless otherwise agreed by the Committee, each site shall be designed to detain at least 50% of the required site detention and will have a maximum outflow of .2cfs/acre.

**Section 5.19. WATER SYSTEMS.** No individual water supply system shall be installed or maintained for any Building or Building Site unless such system is approved by the Committee and is designed, located constructed and equipped in accordance with the requirements, standards and recommendations of any applicable governmental authority having jurisdiction.

**Section 5.20. MAINTENANCE.** Any Lawn and all Landscaping shall be maintained by Owners and Occupants of the Building Site in substantially the following manner and except as agreed in writing by the Committee:

Cut	Cut all Lawn areas on a regular basis with mowers so as to maintain a manicured appearance.
Trim	Trim around all Buildings, trees, poles, fences and other obstacles during such servicing.
Edge	Edge all walks, curbs, driveways, and similar areas upon such servicing.
Weed	Remove all weeds from bed areas as needed.
Clean Up	Remove all grass clippings from walks, drives, and parking areas after such servicing.
Shrub Pruning	Prune all shrubbery as needed to maintain and promote a manicured and healthy appearance.
Tree Pruning	Prune all trees as required to remove damaged branches, sucker growth, dead wood, and similar matters.
Leaf Removal	Collect and remove all fallen leaves.

**Section 5.21. EXTERIOR LIGHTING.** All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained in accordance with plans and specifications approved in writing by the Committee to the end that lighting shall be compatible and harmonious throughout the Property.

**Section 5.22. APPLICATION OF RESTRICTIONS.** All real property within the Property shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. However, reasonable variations from the strict application of the limitations and restrictions in this Article V in any specific case may be granted by the Committee in accordance with Article VIII if such strict application would be unreasonable or unduly harsh under the circumstances or otherwise not in the best interests of, or harmful to, the other Owners and Occupants. Any such variance shall not constitute a waiver or estoppel with respect to any of the provisions of this Declaration on any future action by the Committee.

**ARTICLE 6  
[RESERVED]**

**ARTICLE 7  
ZONING AND OTHER RESTRICTIONS**

The Protective Covenants shall not be taken as permitting any action or thing prohibited by zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease, that are applicable to the Property. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Protective Covenants shall be taken to govern and control. Any approval of the Committee required in this Declaration does not in any way relieve Owners and Occupants from obtaining approvals or otherwise complying with any laws, rules or regulations required by any governmental body or other person having jurisdiction or other legal rights thereunder.

**ARTICLE 8  
APPROVAL OF PLANS; CONSTRUCTION**

**Section 8.1. PLANS.** No construction of any Building, and exterior reconstruction, or exterior alterations of any Building or other exterior Improvements, including Signs, may be commenced without written approval by the Committee of the plans for such construction or alteration, which approval shall be sought in accordance with the provisions of Article IX below. The plans submitted for approval of the Committee shall include all plans, specifications, drawings, studies, reports and other materials, both written and otherwise, as the Committee may reasonably request in order to grant an informed approval or disapproval in compliance with the terms and provisions of this Declaration. Approval of plans by the Committee may be secured prior to acquisition of a Building Site pursuant to the terms of a sales contract.

**Section 8.2. CONSTRUCTION.** Upon receipt of approval of plans, Owner or Occupant shall diligently proceed with the commencement and completion of all approved construction. Unless work on the approved construction shall be commenced within one (1) year from the date of such approval and diligently pursued to completion thereafter, the approval shall automatically expire unless the Committee has given a written extension of time.

**ARTICLE 9  
THE COMMITTEE**

**Section 9.1. THE COMMITTEE.**

(a) **Duties.** The Committee is hereby created pursuant to this Declaration. The functions of the Committee shall be to (a) enforce the provisions of this Declaration, (b) grant approvals of construction, reconstruction and development of Building Sites and Improvements in accordance with the restrictions, requirements and provisions contained in this Declaration, including without limitation the right to insure that all Improvements on the Property harmonize with existing surroundings and structures on the Property, and (c) grant such other approvals or variances and perform such other functions and duties as may be required by the terms of this Declaration.

(b) **Organization and Operation.** The Committee shall consist of three persons. Until the sooner to occur of 40 years from the date of this Declaration or the date upon which Grantor has sold and conveyed to third parties (as opposed to transferred to another entity or entities controlled by Grantor or Affiliates of Grantor) more than ninety-five percent (95%) of the total acreage contained in the Property (hereinafter the "Turnover Date"), Grantor shall have the right and privilege to appoint all members of the Committee. After the Turnover Date, the members of the Committee shall be appointed and elected by majority vote of the Owners in the Property. Each Owner shall have votes equal to the number of whole acres existing in the Owner's Building Site, and a majority vote of all votes attributable to all Owners shall elect each member. Votes shall not be accumulated for the election of members of the Committee. Members shall serve for three year periods, unless earlier removed pursuant to a vote of the Owners. Any person may serve as a member of the Committee, and need not be an Owner, or a representative or employee or other associate of an Owner. Meetings of the Owners for the

purpose of electing the Committee shall be called by the existing Committee in September of every three years. In the absence or failure of the existing Committee members to call such meetings, or if a special meeting is desired by the Owners, Owners owning at least 10 percent of the total votes in the Property may call a meeting of the Owners for the purpose of electing a new Committee at any time. Notice of any meeting of Owners, whether given by the Committee or Owners having at least 10% of the total votes, shall be given at least 20 days prior to any such meeting by written notice to all Owners at the then address of each Owner on its Building Site, unless the Owner gives another address to the Committee or the Owners for purposes of receiving notice. Said meetings may be held in any location in Salt Lake County, Utah.

**Section 9.2. APPROVAL PROCEDURE.** Any plans and specifications, or any other matter required by this Declaration to be, submitted to the Committee shall be approved or disapproved by it in writing no later than thirty (30) days after submission. A majority vote of the Committee shall be required to approve or disapprove any plans or specifications or other matter submitted to the Committee. If the Committee fails to respond to a properly submitted application for approval of plans and specifications within sixty (60) days of the proper submission of such application, such application shall be deemed approved.

**Section 9.3. STANDARDS.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all Improvements within the Property conform to and harmonize with the requirements and restrictions of this Declaration.

**Section 9.4. DEVELOPMENT GUIDELINES.** The Committee may from time to time adopt such "Development Guidelines" as it deems necessary to clarify, amplify upon and further develop the restrictions, guidelines and requirements of this Declaration, and to inform Owners and Occupants of the standards that will be applied in approving or disapproving matters submitted to the Committee pursuant to the provisions of this Declaration. Such Development Guidelines may amplify but may not be less restrictive than the regulations and restrictions stated in this Declaration, and shall be binding upon all Owners and Occupants. Such Development Guidelines may state more specifically the rules and regulations of the Committee with respect to the submission of plans and specifications for approval, the time or times within which such plans or specifications must be submitted, and may state such other rules, regulations, policies, and recommendations that the Committee will consider in approving or disapproving proposed construction of or alterations to Buildings and Improvements, or other matters submitted to the Committee pursuant to this Declaration.

**Section 9.5. NO LIABILITY FOR DAMAGES.** Neither the Committee nor the Grantor, nor any of its or their agents, assigns, owners, managers or otherwise, shall be liable for damages by reason of any action, inaction, approval, or disapproval by the Committee with respect to any request made pursuant to this Declaration.

**Section 9.6. PAYMENT.** Before any application shall be approved by the Committee, the Owner or Occupant who submits the plans and specifications for approval shall provide assurance, in such form as the Committee shall determine, for the payment or reimbursement to the Committee for its reasonable professional costs (including architectural or legal costs,

whether or not such costs are incurred with respect to members of the Committee) incurred as part of the review by the Committee of such plans and specifications.

## **ARTICLE 10 GENERAL EASEMENTS**

**Section 10.1. DRAINAGE.** Grantor hereby reserves easements over each Building Site for drainage of surface water wherever and whenever reasonably necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that such easements shall terminate as to any particular Building Site when the initial principal Building and Landscaping approved for such Building Site has been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. Grantor shall promptly restore any area affected by the exercise of such easements and rights, and shall indemnify the Owner of such Building Site, its lessees and sublessees, from all costs incurred as a result of any damage to such Building Site due to the negligence or misconduct of Grantor in the exercise of such easement and rights.

**Section 10.2. GRADING.** Grantor may at any time make such cuts and fills upon the Property and do such grading and moving of earth as, in its judgement, may be necessary to improve or maintain the Streets in or adjacent to the Property and to drain surface waters therefrom; and may assign such rights to Salt Lake County or to any municipal or public authority; provided, however, that after plans for the initial principal Building upon a Building Site shall have been approved by the Committee as provided herein, the rights of the Grantor under this section shall terminate with respect to all parts of such Building Site other than the easement area thereof, except that Grantor or any such municipal or public authority shall thereafter have the right to maintain existing Streets and drainage structures.

**Section 10.3. UTILITIES AND SIGNS.** Grantor hereby reserves unto itself an easement and right of way, including but not limited to rights of ingress and egress, within a 10 foot right of way around the perimeter of any Building Site, for the limited purpose of constructing, erecting, operating and/or maintaining utilities, fibers and other telecommunication conduits, and similar public or quasi-public improvements on or across any Building Site as necessary to complete, construct, develop, expand, loop or improve the Property and the Building Sites and also to construct and maintain one or more Signs indicating the name and location of the Property. Any use of such easement shall be performed in such a reasonable manner as to minimize the impact of such construction, maintenance, or use, upon the Property. Each Owner or Occupant shall also dedicate, from time to time, if requested by the Grantor or otherwise, on its Building Site, to the respective private or public utility company or governing body, one or more easements for any utility, including fiber, from its respective property line to the Building.

**Section 10.4. MAINTENANCE AND INTERFERENCE.** Grantor, Owners and Occupants, whichever the case may be, hereby agree to use their best efforts to minimize

interference with Owners, Occupants and their guests and/or invitees in connection with the Grantor's use of the easements described in this Article X.

**Section 10.5. EXCEPTION FOR GRANTOR.** Notwithstanding any restrictions or provisions contained in this Declaration to the contrary, until the expiration of Grantor's right to appoint the members of the Committee as described in Article IX above, Grantor shall have the right to use any Building Site owned by Grantor in furtherance of any marketing or sales effort, or to facilitate construction or improvement of any Building or of the Property.

## **ARTICLE 11 GENERAL**

**Section 11.1. OWNERS ACCEPTANCE.** The Owner or Occupant of any Building Site on the Property by acceptance of a Deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Grantor or a subsequent Owner or Occupant of such Building Site, shall accept such Deed or other contract upon and subject to each and all of the terms of this Declaration, including without limitation the Protective Covenants, and is required to deliver a copy of this Declaration to any subsequent Owner or Occupant taking a Deed under such Owner. Owner agrees to cause any Occupant of its Building or Building Site to agree to be bound by the terms of this Declaration including, without limitation, the Protective Covenants.

**Section 11.2. INDEMNITY FOR DAMAGES.** Each and every Owner or Occupant and future Owner or Occupant in accepting a Deed or contract for any Building Site agrees to indemnify Grantor and the Committee for any damage caused by such Owner or Occupant, or the contractor, agent, or employees of such Owner or Occupant, to roads, Streets, gutters, walkways, or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Grantor or the Committee or for which Grantor or the Committee has responsibility at the time of such damage.

**Section 11.3. LIMITATION OF LIABILITY.** Each and every Owner or Occupant or future Owner or Occupant in accepting a Deed or contract for any Building Site acknowledges and agrees that neither the Grantor nor the Committee, nor any of their respective partners, owners, managers, officers, directors, employees, agents or Affiliates, shall be liable to the Owner or Occupant or any person acting by, through or under such Owner or Occupant (any one such person or entity herein called an "Aggrieved Person") for any injury or damage, including monetary damage, to the business, equipment, merchandise or other property of the Aggrieved Person resulting from any cause, including, but not limited to, claims of breach of fiduciary duty, losses due to mistakes or the negligence of any of the employees, brokers or other agents, of the Grantor, the Committee or otherwise, except if and to the extent that such act or omission constitutes gross negligence or willful misconduct.

**Section 11.4. ENFORCEMENT.** Enforcement of the provisions of this Declaration may be made by Grantor, the Committee or any Owner or Occupant affected thereby, and shall be by any appropriate proceeding at law or in equity against any Owner or Occupant, person, corporation, trust or other entity violating or attempting to violate said provisions, either to

restrain such violation, to enforce liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue thereof. Neither Grantor nor the Committee shall be liable for the enforcement of, or failure to enforce, said provisions, and failure of Grantor, the Committee or any Owner or Occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**Section 11.5. SEVERABILITY.** Every one of the provisions of this Declaration, including the Protective Covenants, is hereby declared to be independent of, and severable from the rest of such provisions and of and from every combination of such provisions. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or Protective Covenants, which shall otherwise remain in full force and effect.

**Section 11.6. CAPTIONS.** The captions preceding the various sections, paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Declaration. Wherever and whenever applicable, the singular form of a word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

**Section 11.7. MORTGAGES; DEEDS OF TRUST.** Breach of any of the provisions of this Declaration or any of the foregoing Protective Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value and covering any portion of the Property; but this Declaration and said Protective Covenants shall be binding upon and effective against any Owner or Occupant of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

**Section 11.8. DURATION, MODIFICATION AND TERMINATION.** The conditions, restrictions, covenants, easements and reservations set forth in this Declaration shall run with and bind the land within the Property and shall be and remain in effect, and shall inure to the benefit of, and be enforceable by, through or under Grantor or the Owner of any portion of the Property, subject to and pursuant to the terms of this Declaration, their heirs, successors and assigns for a term of sixty (60) years from the date this Declaration is recorded with the Salt Lake County Recorder, after which time these Protective Covenants shall expire and terminate. This Declaration may be amended from time to time by the Committee pursuant to Section 9.1(a) hereof.

**Section 11.9. ASSIGNABILITY.** Grantor may assign all of its rights and obligations herein to any person or entity to which Grantor simultaneously conveys its interest in all or substantially all of the Property owned by Grantor as of the date of such assignment and conveyance. The foregoing assignment and assumption shall be evidenced by a signed and acknowledged written document recorded in the office of the Recorder of Salt Lake County. By such assignment and assumption, the grantee thereof shall be conclusively deemed to have accepted such assignment and shall thereafter have the same rights and be subject to the same obligations as are given and assumed by Grantor herein.



**Section 11.10. AMENDMENTS.** This Declaration may be amended by an instrument duly executed and recorded by the Management Committee that has been approved by Owners owning more than fifty percent (50%) of the total acreage of the Property. Approval of any such amendment shall be obtained by the Management Committee giving all Owners written notice, at the address for such Owner as furnished by each such Owner to the Management Committee from time to time (or in the absence of such notice, at the address shown by the appropriate governmental body for the mailing of property tax notices), of the proposed amendment, and ten (10) days in which to notify the Management Committee of such Owner's approval or disapproval of the proposed amendment. The Management Committee may, but need not, call an actual meeting of all Owners, to be held in Salt Lake County, to discuss the proposed amendment. The Management Committee need only certify in the recorded amendment instrument that it has received written approvals of the requisite Owners for the amendment to be effective, regardless of whether or not a given Owner has responded to the mailed notice of proposed amendment. Any Owner or Owners owning more than twenty percent (20%) of the Property may request that the Management Committee consider and mail for vote by the Owners a proposed amendment to this Declaration.

**IN WITNESS WHEREOF**, Grantor has caused this instrument to be signed by a duly authorized person on the date first above written.

**NINIGRET TECHNOLOGY WEST, L.C.**, a  
Utah limited liability company

By: The Ninigret Group, L.C., a Utah limited  
liability company

Its: Manager

By: *Randy B. Alford*  
a Manager of The Ninigret Group, L.C.

STATE OF NEW YORK )  
 : ss.  
COUNTY OF NEW YORK )

The foregoing instrument was acknowledged before me this \_\_\_ day of August, 2005, by Randolph G. Abood, a Manager of The Ninigret Group, L.C., a Utah limited liability company, as manager of Ninigret Technology West, L.C.

NOTARY PUBLIC: \_\_\_\_\_  
Residing at: \_\_\_\_\_

LISA R. FIELDS  
Notary Public, State of New York  
No. 24-4887464  
Qualified in Kings County  
Commission Expires March 23, 2007



My Commission Expires:

NIN TECH WEST  
OVERALL BOUNDARY DESCRIPTION

A parcel of land located in the South half of Section 7 and in the North half of Section 18, Township 1 South, Range 1 West, Salt Lake Base and Meridian more particularly described as follows:

Beginning on the North line of that certain parcel described as "Parcel 4" in Book 7166 at Page 0076 in the Salt Lake County Recorder's Office, which point is 143.20 feet North  $00^{\circ} 12' 49''$  West along the section line from the Salt Lake County Survey Monument found marking the South Quarter corner of Section 7, Township 1 South, Range 1 West, Salt Lake Base and Meridian (the basis of bearings is North  $89^{\circ} 58' 00''$  West 2637.65 feet measured between the South Quarter corner and the Southwest corner of said Section 7), and running thence along said North line South  $89^{\circ} 57' 57''$  East 1608.54 feet to the Northeast corner of said Parcel 4 and a point on the Westerly right-of-way line of Bangerter Highway, as shown on the Utah Department of Highways Right-of-Way Plans for Project Number RS-0162(3), on sheets 6, 7, and 8, said point also being on a 3909.72 foot radius curve to the left (radius point bears South  $87^{\circ} 57' 47''$  East); thence along said right-of-way line the following ten (10) courses: 1) Southerly 155.52 feet along the arc of said curve through a central angle of  $02^{\circ} 16' 45''$  (chord bears South  $00^{\circ} 53' 50''$  West 155.51 feet) to a tangent line; 2) South  $00^{\circ} 14' 32''$  East 19.20 feet; 3) North  $89^{\circ} 45' 28''$  East 5.00 feet; 4) South  $00^{\circ} 14' 32''$  East 29.22 feet; 5) South  $89^{\circ} 58' 06''$  West 30.00 feet; 6) South  $00^{\circ} 14' 32''$  East 16.21 feet to the point of curvature with a 3934.72 foot radius curve to the left; 7) Southeasterly 1063.11 feet along the arc of said curve through a central angle of  $15^{\circ} 28' 50''$  (chord bears South  $07^{\circ} 58' 57''$  East 1059.88 feet) to a tangent line; 8) South  $15^{\circ} 43' 22''$  East 1285.29 feet; 9) North  $89^{\circ} 57' 24''$  East 15.58 feet; 10) South  $15^{\circ} 43' 22''$  East 15.12 feet to a point on that certain Utah Power and Light property described in Book 2276 at Page 495, as recorded December 30, 1964 as Entry No. 2051505 in the Salt Lake County Recorder's Office; thence along said line North  $89^{\circ} 58' 12''$  West 141.47 feet; and North  $65^{\circ} 37' 06''$  West 474.72 feet; and North  $55^{\circ} 14' 55''$  West 158.80 feet; and North  $64^{\circ} 26' 02''$  West 2148.12 feet; and North  $26^{\circ} 31' 26''$  West 1303.49 feet to the south line of said Section 7; thence along said line North  $89^{\circ} 58' 00''$  West 30.48 feet; thence North  $26^{\circ} 49' 05''$  West 54.57 feet; thence North  $00^{\circ} 47' 55''$  East 94.52 feet; thence South  $89^{\circ} 58' 00''$  East 1181.48 feet to the point of beginning.

Contains 108.6 acres more or less.

Tax id # 15-18-200-014-0000