

Presenting a live 90-minute webinar with interactive Q&A

Reciprocal Easement Agreements for Retail and Mixed-Use Project Development: Structuring and Amending REAs

Protecting Rights and Obligations; Minimizing Risk for Developers, Retailers, and Other Project Constituents

THURSDAY, AUGUST 26, 2021

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Tal Diamant, Shareholder, **Brownstein Hyatt Farber Schreck, LLP**, Denver
Gretta C. Spendlove, Shareholder, Board of Directors, **Dentons**, Salt Lake City

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

WHEN RECORDED, RETURN TO:

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS

AND GRANT OF EASEMENTS

FOR

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT OF EASEMENTS FOR _____ (the "Declaration") is made and entered into as of the ____ day of _____, 20__, by _____, LLC, a _____ limited liability company ("Declarant").

RECITALS:

- A. Declarant is the owner of approximately ____ acres of unimproved land located in ____ County, State of ____, which is described on the attached "Exhibit A" (the "Property"), which is incorporated herein by this reference.
- B. Declarant is the sole owner of the Property.
- C. Declarant hereby subjects all of the Property to this Declaration.
- D. Declarant intends to develop the Property as a planned commercial retail, hospitality, and office center to be known as "_____" and desires to impose upon the Property certain covenants, conditions, easements, restrictions, charges, agreements, reservations, and other encumbrances. Such covenants, conditions, easements, restrictions, charges, agreements, reservations, and other encumbrances shall run with the land and be binding on the Property and benefit the Property and Declarant and Manager as set forth herein. Declarant desires and intends that the Owners and any other Person hereafter acquiring any interest in the Property shall at all times enjoy the benefits of and hold their interests subject to the terms contained in this Declaration.
- E. Declarant intends the Property to include certain Common Areas and Facilities. Declarant intends such Common Areas and Facilities to be maintained, repaired and replaced, as necessary by Manager.
- F. In order to facilitate the orderly development and use of the Property, Declarant desires to record this Declaration for the benefit of the Property, Declarant, Manager and eventual Owners and Occupants of the Property.

NOW, THEREFORE, in consideration of the above recitals (which are incorporated by reference into this Declaration), Declarant hereby covenants, agrees, and declares that the Property and every part thereof shall be held, transferred, sold, hypothecated, encumbered, conveyed, leased, subleased and occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to the covenants, conditions, easements, restrictions, charges, agreements, reservations, and other encumbrances set forth below.

DECLARATION:

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

1.1 “Access Areas” means all areas within each Lot or which are appurtenant rights to each Lot intended to be used at any time and from time-to-time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians, which areas may change for a particular Lot when that Lot is developed or redeveloped. Access Areas do not include any portion of a Lot on which a Building is located at any time or from time-to-time, unless such Building is a parking structure expressly designated as an Access Area.

1.2 “Approved Plans” shall mean the grading, drainage, and utility plans for a Lot, and the plans for construction of all other Improvements for a Lot, including plans for (i) any Building and Access Areas and Landscaping Improvements, and (ii) any additions, remodeling, reconstruction or other alteration of existing Improvements, all as approved in writing by Declarant.

1.3 “Assessments” means all General Assessments, Limited Assessments, Special Assessments and any other fees and charges, including all installments thereof, as may be levied in accordance with Section 8 of this Declaration.

1.4 “Budget” has the meaning set forth in Section 7.1.

1.5 “Budget Objection Notice” has the meaning set forth in Section 7.2.

1.6 “Building” means any permanently enclosed structure placed, constructed or located on a Lot, which for the purpose of this Declaration shall include any building appurtenances such as stairs leading to or from a door, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

1.7 “Building Area” means all of those areas on each Lot on which a Building may be erected, in compliance with the applicable Governmental Requirements. Except as otherwise specifically set forth in this Declaration, one or more Buildings may be located within a Building Area.

1.8 “Buildable Square Footage” means the aggregate square footage of the Building(s) located on a Lot, unless no Building has been constructed, in which case Buildable Square Footage means the aggregate square footage of all Buildings that may be constructed on the Lot, as shown on the Site Plan approved by the City of _____, or if not yet approved, then as may be approved by the City of _____.

1.9 “Business Park” means all that real property now or hereafter made subject to this Declaration. The Business Park is intended to ultimately consist of commercial retail, hospitality, and office uses.

1.10 “Common Areas and Facilities” means all real property owned, leased or maintained by the Declarant and/or Manager, to include but not be limited to the Common Roads, with related directional or stop signs and lighting facilities; Sign Easement Areas that will include Signs and may include landscaping and lighting facilities; Common Drainage System; Utility Lines and portions of the sanitary sewer system which serve and/or are used by more than one Lot; the Greenscape Area, that may also include lighting facilities; and any other property which the Declarant and/or Manager elects to maintain or is obligated to maintain by any governmental authority or agency, including but not limited to public right of way and drainage facilities.

1.11 “Common Drainage System” has the meaning set forth in Section 3.9.

1.12 “Common Expenses” means the cost of repairing, replacing, cleaning and maintaining the Common Areas and Facilities, as further described in Section 5.

1.13 “Common Roads” means those Access Areas that are roadways for vehicular traffic, and may include adjacent sidewalks, walkways or similar areas for the ingress and egress of pedestrians and adjacent landscaped areas as depicted on the Site Plan. Common Roads shall not include any publicly-dedicated roadways that may be included in the Property.

1.14 “Communications Equipment” has the meaning set forth in Section 6.3.

1.15 “Constant Dollars” means the value of the U.S. dollar to which such phrase refers, as adjusted from time-to-time. An adjustment shall occur on the 1st day of January of the sixth (6th) full calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the calendar month during which this Declaration is recorded in the Official Records; the “Current Index Number” shall be the level of the Index for the calendar month of the year preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1996=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Manager shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.16 “Declarant” means _____, a _____ limited liability company, and to the extent provided in Section 13 hereof, its successors and assigns. References in this Declaration to the Declarant shall mean the Declarant so long as it is the Owner of any part of the Property, and thereafter shall mean Declarant’s Successor.

1.17 “Declarant’s Reserved Powers” has the meaning set forth in Section 13.

1.18 “Declarant’s Successor” means, in the following order of preference, once the Declarant is no longer the Owner of any part of the Property, the partnership, corporation, limited liability company, or other entity which is the Owner of any Lot within the Property and which is owned (whether directly as its member, partner, shareholder or beneficiary, or indirectly through intermediate tiers of ownership entities) by _____, LLC, a _____ limited liability company (the “Initial Successor”). In the event there shall be more than one Owner entity that qualifies as an Initial Successor, the Initial Successor shall be deemed to be the Owner entity which has the highest percentage of ownership interest

or shares owned by _____, LLC (directly or indirectly), but if each Owner entity is equally owned by _____, LLC (directly or indirectly), then the qualifying Owner entity that owns the most aggregate area (square footage) within the Property, shall be deemed the Initial Successor. If an Initial Successor does not exist or the Initial Successor transfers its portion of the Property without first assigning its Declarant's Reserved Powers as defined in Section 13 of this Declaration, then Declarant's Successor shall mean any Person which acquires from the Declarant or from the Initial Successor, all of the land within the Property which the Declarant or the Initial Successor owned immediately preceding such acquisition. If none of the foregoing apply or no longer exist, then the Declarant's Successor shall be a managing agent selected by the Owners of Lots containing in the aggregate at least fifty-one percent (51%) of the aggregate acreage, measured in square feet, within the Property.

1.19 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Grant of Easements for _____, as amended from time-to-time, including by a Supplemental Declaration.

1.20 "Default Interest" has the meaning set forth in Section 9.2.

1.21 "Drainage Easement" has the meaning set forth in Section 3.9.

1.22 "Easement Rules" has the meaning set forth in Section 3.11.

1.23 "Effective Date" means the date this Declaration is recorded among the Official Records.

1.24 "Environmental Laws" has the meaning set forth in Section 6.4.

1.25 "Extension Period" has the meaning set forth in Section 14.2.

1.26 "General Assessments" means assessments levied against all Lots to fund the Common Expenses as defined in Section 8.2.

1.27 "Greenscape Areas" has the meaning set forth in Section 5.1.3.

1.28 "Greenscape Area Improvements" has the meaning set forth in Section 5.1.3.

1.29 "Governmental Authorities" means any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

1.30 "Governmental Requirements" means all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

1.31 "Hazardous Materials" has the meaning set forth in Section 6.4.

1.32 "Improvements" means any and all existing or future improvements constructed on a Lot by its Owner, including, but not limited to Buildings, Utility Lines, landscaped areas, grading, paved areas, lighting and signs.

1.33 "Landscaping Improvements" has the meaning set forth in Section 6.10.

1.34 “Limited Assessments” means assessments for those portions of the Common Expenses, if any, as may be levied against one or more, but not all of the Lots for benefits or services that primarily benefit or appertain to those particular Lots.

1.35 “Lot” means a legal lot within the Property on which a Building is to be constructed. Lot includes without limitation any legal lot as shown on _____ Plat “A” (the “Plat”) which will be recorded in the future in the Official Records, and as amended from time to time.

1.36 “Manager” means the qualified, reputable and experienced Person designated by Declarant from time-to-time to maintain and operate the Common Areas and Facilities and otherwise perform the obligations of Manager set forth in this Declaration. The Person designated as Manager shall serve in such capacity until it resigns upon at least sixty (60) days prior written notice, or is removed by Declarant.

1.37 “Mortgage” means a mortgage, deed of trust, security deed or other security instrument recorded in the Official Records.

1.38 “Mortgagee” means the mortgagee or beneficiary or grantee, as applicable, under a Mortgage, recorded in the Official Records.

1.39 “Occupant” means any Person from time-to-time entitled to the use and occupancy of any portion of a Building in the Property under an ownership right or under any lease, sublease, concession, or similar agreement, but only during the term of any such agreement.

1.40 “Official Records” means the official records of the _____ County, _____ Recorder.

1.41 “Owner” means the person that at the time concerned is the legal owner of record (in the Official Records) of a whole or undivided fee interest in any portion of any Lot. If a Lot is owned by more than one Owner, the Owner or Owners holding at least fifty-one percent (51%) of the ownership interest in such Lot shall designate in writing one (1) Person to represent all of such Owners and such designated Person shall be deemed the Person authorized to act on behalf of such Owners for purposes of this Declaration. Notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean a Mortgagee unless and until the Mortgagee has acquired title to the applicable Lot pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure. If so provided in its lease agreement with an Owner (and if with an Owner other than Declarant, with the written consent of Declarant), a lessee may also be considered an “Owner” solely for purposes of this Declaration, notwithstanding any contrary language in this Declaration.

1.42 “Pads” means Pads 1 through 9, as identified in the Site Plan. The Site Plan may be modified from time-to-time at the Declarant’s sole discretion.

1.43 “Permitted Uses” has the meaning set forth in Section 6.1.

1.44 “Permittee” means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Property. Persons engaged in civic, public, charitable or political activities within the Property, including but not limited to the activities set forth below, shall not be considered Permittees.

1.45 “Person” means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or governmental entity.

1.46 “Primary Period” has the meaning set forth in Section 14.2.

1.47 “Prohibited Uses” has the meaning set forth in Section 6.2.

1.48 “Property” has the meaning set forth in Recital A above and any additional real property that may from time-to-time be annexed to the Property and made subject to this Declaration by supplemental declaration and/or supplemental plat or map together with all improvements now or hereafter located thereon, together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. If any property is subsequently withdrawn from the Property pursuant to the provisions of this Declaration, the term “Property” shall thereafter not include said withdrawn property.

1.49 “Proportionate Share” has the meaning set forth in Section 8.3.

1.50 “Restaurant” means any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption.

1.51 “Service Charge” has the meaning set forth in Section 8.2.

1.52 “Signs” had the meaning set forth in Section 3.6.

1.53 “Sign Easement Areas” means those portions of the Property to be determined by Declarant on which the Signs are to be erected, which areas need not be contiguous, subject to a possible future relocation of the Sign Easement Areas pursuant to Section 3.6.

1.54 “Site Plan” means the conceptual site plan of the Property attached as “Exhibit B” to this Declaration, which Site Plan may be modified from time-to-time by Declarant.

1.55 “Special Assessment” has the meaning set forth in Section 8.2.

1.56 “Storm Drainage Area” has the meaning set forth in Section 3.9.

1.57 “Structure” means (i) any thing or device the placement of which upon any Lot might affect the physical appearance thereof, including, by way of illustration and not limitation, Buildings, sheds, covered patios, driveways (including public road access), fountains, parking areas, paving, curbing and curb cuts for public road access, fences or walls, exterior lighting devices, or any sign or signboard, and (ii) any excavation or fill, the volume of which exceeds ten (10) cubic yards, or any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot.

1.58 “Temporary Construction Easement” has the meaning set forth in Section 3.5.

1.59 “Third Parties” has the meaning set forth in Section 6.3.

1.60 “Supplemental Declaration” means an amendment to this Declaration that annexes real property to the Property, subject such real property to this Declaration, and sets forth such amendments to the Declaration and such additional covenants, conditions, easements, restrictions, charges, agreements

and other encumbrances as may be applicable to the annexed property, executed by Declarant and recorded in the Official Records, and any recorded amendments thereto.

1.61 “Utility Lines” mean those facilities and systems for transmissions of utility services, including, but not limited to, storm water drainage and storage systems or structures or both; fire protection, irrigation and domestic water mains and manholes; lift stations; sewer lines and systems; fire and landscape water sprinkler systems (including without limitation, fire risers); telephone lines and manholes, electrical conduits or systems, gas mains and other public or private utilities providing service to any Lot and its Occupants.

1.62 Other Defined Terms. Any other term to which meaning is specifically given by any provision of this Declaration shall for purposes of this Declaration be deemed to have such meaning.

2. Property Subject to the Declaration.

2.1 General Declaration Establishing the Business Park. The Declarant hereby declares that (i) all of the Property is and shall be held, transferred, hypothecated, encumbered, conveyed, leased, subleased and occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, and (ii) the provisions of this Declaration are declared and agreed to be in furtherance of a general plan for the orderly subdivision, improvement, maintenance and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. Each of the easements and rights granted or created in this Declaration (except those granted to Declarant or Manager or Third Party) are appurtenances to the affected Lots, and none of such easements and rights (except those granted to Declarant or Manager or Third Party) may be transferred, assigned or encumbered except as an appurtenance to such Lots. For the purposes of such easements and rights, the Lots benefitted shall constitute the dominant estate, and the portions of the Lots burdened by such easements and rights shall constitute the servient estate. Each right-of-way, easement, covenant and restriction created by this Declaration (whether affirmative or negative in nature) shall create an equitable servitude on the burdened portions of the Lots in favor of the benefits Lots (but no other real property) or Declarant or Manager or Third Party. This Declaration shall constitute a covenant running with the land, and shall be binding on each Owner and their respective successor and assigns and shall benefit each Owner, Declarant, Manager and Third Party and their respective successors and assigns as set forth herein. This Declaration shall be binding on each Lot. Any lease agreement between an Owner and an Occupant respecting a Lot shall be subject in all respects to the provision of this Declaration and any failure by the Occupant to comply with the terms hereof shall be a default under such lease. An Owner shall be responsible and liable for any damage to the Property caused by its Occupants and the Permittees and invitees of such Owner and its Occupants. Each Owner of a Lot, by acceptance of a deed (or ground lease as provided in the definition of “Owner” above) conveying title thereto shall accept said deed (or ground lease as provided in the definition of “Owner” above) subject to all of the provisions of this Declaration and shall be deemed to agree with each Owner of any other Lot that, for so long as it shall retain an ownership interest (or ground lease interest as provided in the definition of “Owner” above) in said Lot, it shall perform, observe and comply with all provisions of this Declaration.

2.2 Annexation. Any real property contiguous to or in the immediate vicinity of the real property described on Exhibit A attached hereto may be annexed within the Property by the Declarant so long as the Declarant or an Affiliate of Declarant is the Owner of any portion of the Property, thereby subjecting such property to this Declaration, without the consent of any Owner, Mortgagee, Occupant or other Person. An “Affiliate” of the Declarant shall include any entity which controls, is controlled by, or is under common control with Declarant. The scheme of this Declaration shall not, however, be extended to include any such real property unless and until the same is expressly subjected to this Declaration by the recordation of a Supplemental Declaration as herein provided. Any Supplemental Declaration recorded

pursuant to the provisions of this Section 2.2 may contain such complimentary or supplemental additions and modifications to the covenants, conditions, easements, restrictions, charges, agreements and other encumbrances set forth in this Declaration as may be considered necessary or desirable by the maker of the Supplemental Declaration to reflect the different character, use or nature of the annexed property, provided that such complimentary or supplemental additions and modifications do not adversely affect the Lots or any use thereof in a material manner. Nothing in this Declaration shall be construed to require the Declarant to annex or develop any additional property.

2.3 Deannexation. So long as the Declarant or an Affiliate of the Declarant is the Owner of any portion of the Property, the Declarant may unilaterally amend this Declaration in order to withdraw (deannex) any portion of the Property owned by the Declarant from the force and effect of this Declaration; provided that any such deannexation shall not affect any plans, specifications or use previously approved by the Declarant, or any Structure at any time constructed pursuant to such approvals, or any easements benefitting any such Structure. Upon recordation of an amendment to withdraw any portion of the Property, such deannexed property shall no longer be subject to the provisions of this Declaration except for (i) any easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant pursuant to this Declaration which affect the deannexed property, (ii) any easements for Common Areas and Facilities located on the deannexed property which serve or benefit the Property and improvements thereon which remain subject to this Declaration, (iii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Declarant in the instrument effectuating such deannexation, and (iv) any unsatisfied obligations under this Declaration relating to the deannexed property which accrued prior to the deannexation. Such deannexation shall be made by recording a written instrument among the Official Records withdrawing the effect of the covenants, conditions, easements, restrictions, charges, agreements and other encumbrances of this Declaration from the deannexed property. Such deannexed property may be used by the Declarant, or any successor, assign or transferee, for any lawful purpose or use.

2.4 Dedication of Public Roads and Improvements. So long as the Declarant or an Affiliate of the Declarant is the Owner of any portion of the Property, the Declarant may unilaterally dedicate public roads or construct or dedicate other improvements upon the Property as required by the City of _____ or as deemed necessary or advisable by the Declarant in its sole discretion in order to complete the development of the Property, provided that such dedication or improvements do not adversely affect in a material manner any plans, specifications, or use previously approved by Declarant.

3. Easements.

3.1 Development Easements. There is hereby reserved unto the Declarant and to such other parties as the Declarant may specifically, and in writing, assign such rights, for the benefit of the Declarant, non-exclusive blanket easements upon, across and under the Property for (i) vehicular and pedestrian ingress and egress, (ii) curb cuts, slope, or grading easements, (iii) the placement (including relocation) of signs relating to the Property and the uses thereof and signs used for sales and marketing purposes, (iv) the right to erect entry features, promotional and sales displays and other similar items within the Property, (v) landscaping of the Property; (vi) the right to maintain, repair and replace the foregoing items and easements, and (vii) the installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, drainage, storm water detention and/or sediment control, gas, cable television, telephones and electricity, and further including the right to connect to and use any such utilities which may exist or be located upon the Property from time-to-time, provided that the location of any such easements does not unreasonably and materially interfere with the use, operation and enjoyment of any existing or approved Structures on any Lots. By virtue of this easement, it shall be expressly permissible to install and maintain the necessary conduits, pipes, lines and other equipment within the Property, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines,

on, above, or below any portion of the Property, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress within the Property. There is further reserved unto the Declarant the right to grant specific easements in its sole discretion, both temporary and permanent, to any person or entity, including all public authorities and utility companies, over any part of the Property in furtherance of the blanket easements created by this Section 3.1.

3.2 Common Road Easements. Declarant does hereby grant and establish in favor of the Owners (and their Occupants and Permittees) and for the benefit of the Property, a perpetual and non-exclusive easement for ingress and egress by vehicular and pedestrian traffic into, out of, on, over and across the Common Roads. Once constructed, the Common Roads shall be operated, maintained and repaired by Manager in conformance with the terms of this Declaration, and Declarant does hereby grant and establish in favor of Manager an easement for such purpose. The Common Roads may also be used to accommodate directional signs for those Lots located or to be located adjacent thereto, to the extent permitted by applicable Governmental Requirements, subject to approval by Declarant or Manager of the size, appearance, and location of such directional signs in its sole discretion, and Declarant does hereby grant and establish in favor of the Owners of Lots located or to be located adjacent thereto or benefited thereby a perpetual non-exclusive easement for such purpose. Each such Owner shall be solely responsible for the initial cost and maintenance (including cleaning and replacement, as needed) of its own directional sign.

3.3 Cross-Access Easements. Except as otherwise stated below in this Section 3.3 concerning the Pads, Declarant does hereby grant and establish in favor of the Owners (and their Occupants and Permittees) of contiguous Lots and for the benefit of the Property, a perpetual and non-exclusive cross-easement for ingress and egress into, out of, on, over and across the parking areas and access aisles designated by the Owners from time-to-time on such Lots. The Owners and Occupants of each Lot shall use reasonable efforts to ensure their respective employees, contractors, agents and representatives park on the parking areas of said Owner's Lot. However, in no event shall any Owner, Occupant, or Permittee of the Pads be permitted to park anywhere other than said Pads. Declarant shall have the right, at its sole option, to limit access to certain areas of the Property to benefit Owners with particular needs for security or privacy.

3.4 Utility Lines and Facilities Easements.

3.4.1 Easements. Declarant does hereby grant and establish in favor of each of the Owners, a non-exclusive perpetual easement under, through and across the Access Areas of each Lot for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines, subject to the written approval of the Declarant and Owner of the burdened Lot as to the location of such Utility Lines, such approval not to be unreasonably withheld, conditioned or delayed. The grant of easement contained in this Section 3.4.1 shall only be operative to the extent the necessary utility services are not available from an adjacent public right-of-way.

3.4.2 Relocation. At any time and from time-to-time the Owner of a Lot shall have the right to relocate or add to any Utility Lines installed pursuant to the above grant of easement which is then located on such Owner's Lot, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the utilities, (ii) shall not unreasonably interfere with or diminish utility service to the businesses served by the utilities, (iii) shall not reduce or unreasonably impair the usefulness or function of the utilities, (iv) shall be performed without cost or expense to the Owner or Occupant of any other Lot, (v) shall provide for the original and relocated area to be restored to the original specifications, (vi) shall be subject to the approval of Declarant, and (vii) shall not unreasonably interfere with the pedestrian and vehicular access or the Access Areas. Further, if the Utility Lines on the other Lot are

accessed or the surface of the other Lot is disturbed in such relocation, the original area shall be restored to its original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Lots served by such utilities within thirty (30) days after the date of completion of such relocation. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration and to the extent possible, such additional easements shall be located along the perimeters of such Owner's Lot.

3.5 Temporary Construction Easement. The Owners shall have the right to grant non-exclusive temporary construction easements as between the Owners for construction of the Improvements (the "Temporary Construction Easement"). In that regard, each Owner agrees to cooperate in a commercially reasonable manner with each other Owner to grant as necessary those non-exclusive Temporary Construction Easements which may be required from time-to-time as between the Owners, Governmental Authorities and others in connection with completion of the Improvements; provided, however, that any and all such easements shall be located so as to minimize the quantity of the most valuable land to the extent possible being encumbered by such temporary easement(s), all such easements shall be as proximate and contiguous to roadways as reasonably possible, shall extend only from the perimeter of a Lot, and shall not encumber any land unnecessarily. Notwithstanding any provision herein to the contrary, in no event shall access to any construction site be obstructed except for temporary interruptions not to exceed twenty-four (24) hours, provided the affected Owner is given not less than five (5) business days prior written notice thereof.

3.6 Sign Area Easement. Declarant does hereby reserve unto itself a perpetual, non-exclusive, blanket easement over the Property for the erection, operation, and maintenance of one or more monument signs or pylon signs to be located in each Sign Easement Area as determined by Declarant (the "Signs") and for the installation of related landscaping and lighting (if any) that Declarant elects to have installed with the Signs in the Sign Easement Areas. Declarant shall erect the Signs (and the initial installation of landscaping and lighting or the making of other improvements to the surrounding portions of the Sign Easement Areas) in conformance with the terms of this Declaration as and when dictated by the pace of development of the Property, in its sole discretion. Once completed, the Signs and the other improvements to the Sign Easement Areas shall be maintained by Manager in conformance with the terms of this Declaration and Declarant does hereby grant and establish in favor of Manager an easement for such purpose. The Signs shall only be used for the placement of the names (and identifying logos) of the actual Occupants of the Property and to identify the Property as determined by Declarant or Manager in their sole discretion. All panels to be located on such Signs which identify specific Occupants shall be supplied at the sole cost and expense of the Occupants using such Signs, with the cost of the Sign itself, and all repair and maintenance to be allocated among such Occupants as a Limited Assessment. The costs of Signs which identify the Property, without identifying specific Occupants, shall be shared equitably among all Owners as a General or Special Assessment, as determined in the sole discretion of the Manager. Tenants shall, however, have no right to be listed on any sign. The grant of easement set forth above in this Section 3.6 also includes a perpetual easement (not exceeding twenty feet (20') in width) as reasonably necessary for access to the Sign Easement Areas along the boundaries of the Lot(s) on which the Sign Easement Areas are located; provided, however, that this access easement may be relocated, as needed, at any time the Sign Easement Areas are relocated by Manager. Manager shall have the right at any time and from time-to-time to relocate the Sign Easement Areas if Manager determines that such relocation is in the best interest of the Property and the affected Owners (i.e., those sharing space or intending to share space on the Signs).

3.7 Greenscape Area Easement. Declarant does hereby grant and establish in favor of Manager and for the benefit of the Property, a perpetual easement for the installation and maintenance of the Greenscape Area Improvements in the Greenscape Areas.

3.8 Easement for Encroachments. Declarant does hereby grant and establish in favor of each Owner a non-exclusive easement for Landscaping Improvements encroaching upon an adjacent Lot and/or portion thereof so long as such encroachment is minor and non-material and does not adversely affect the use and enjoyment of the adjacent Lot. Such easement shall in no event exceed three (3) feet. This encroachment easement expressly does not apply to any Building encroachments.

3.9 Storm Water Drainage Easement. Declarant does hereby grant and establish in favor of each of the Owners a reciprocal, perpetual, non-exclusive easement (the "Drainage Easement") to discharge surface water runoff across the portions of the Property designated from time-to-time by Declarant, in its sole discretion (the "Storm Drainage Areas"). In the event an Owner discharges or is responsible for the discharge of any oil, gasoline, pesticides, gasoline, fertilizers, or other Hazardous Materials into any of the Storm Drainage Areas or the Common Drainage System, such Owner shall be held liable for such discharge and shall be responsible for any repairs, costs and expenses incurred in the remediation and clean-up of any such materials from the Storm Drainage Areas and any affected areas of the Property. The Owner responsible for such discharge shall indemnify, defend, and hold harmless the other affected Owners (and any Mortgagee), Declarant and the Manager from any and all claims, actions, damages, fines, liabilities and expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on appeal) of any and every kind, nature, or sort whatsoever which may be imposed upon, incurred by or asserted against the other Owners, Declarant and the Manager in connection with any occurrence or in connection with such a discharge into the Storm Drainage Areas or Common Drainage System. Notwithstanding any of the above language in this Section 3.9, in no event shall any Owner be held responsible, under the terms of this Section 3.9, for the clean-up or remediation of incidental amounts of motor oil, gasoline, and other like by-products of motorized vehicles solely resulting from the existence of motorized vehicular traffic on its Lot in the ordinary course of such Owner's business. The Storm Drainage Areas and the Drainage Easement shall be deemed to include any future enlargement or change in the location of the Storm Drainage Areas, if determined necessary by Declarant or Manager in its sole discretion. Notwithstanding any language to the contrary in this Declaration, this Section 3.9 shall not apply with respect to any Owner whose Lot has its own storm water detention facilities. Owners shall maintain and repair the Storm Drainage Areas located on their own Lots, including the catch basins or other collection points for water to be diverted into drainage pipes forming the common drainage system for the Property (the "Common Drainage System"). The Manager shall maintain and repair the Common Drainage System, beyond such collection points. The Manager shall also have the right to maintain and repair Storm Drainage Areas on an Owner's Lot, if the Owner fails to do so, and to assess the Owner for such maintenance and repair. Declarant reserves to itself and also grants Manager a non-exclusive easement and right of passage on, through, over and across the Lots to maintain, repair and replace any portion of the Common Drainage System or any storm water management area or facilities situated within the Lots including, without limitation, ponds, basins, bio-retention or similar devices, recharge facilities, storm drainage pipes, infiltration trenches, inlets, oil grit separators, drainage areas and underground facilities.

3.10 No Merger. Notwithstanding an Owner's ownership of more than one Lot, the easements granted hereunder (i) shall be binding on, enforceable against and burden, and shall be appurtenant to and for the benefit of each Lot individually, without merger as a result of such common ownership, and (ii) upon conveyance of a Lot so that such Lot ceases to be under common ownership, neither the Owner conveying such Lot nor the Owner acquiring such Lot shall need to execute additional documentation to evidence the existence of such easements, and such easements shall relate back to and shall be deemed to have been created as of the date this Declaration is recorded.

3.11 Easement Rules. Declarant or Manager may establish and maintain general policies, rules, and regulations for the access, repairs, management, maintenance, operation, and use of the Access Areas and other easement areas designated in this Declaration (the "Easement Rules") consistent with the provisions of this Declaration, which Easement Rules may not materially interfere with Declarant's

or an Owner's rights hereunder. Declarant or Manager shall be permitted to enforce the Easement Rules against any Owner or Permittee, including imposing reasonable fines that may be established by the Easement Rules or excluding an Owner or Permittee from using a particular easement. Any such fines established by the Easement Rules shall not be considered liquidated damages. The Manager shall consistently apply and enforce any Easement Rules.

4. Construction.

4.1 Building Location. Declarant, together with the Owner of a particular Lot or the purchaser thereof shall mutually determine the Building Area for such Lot, subject to applicable Governmental Requirements. A Building shall be placed or constructed upon the Lots in that Lot's Building Area, unless otherwise approved in writing by Declarant. Buildings may be located (or relocated) anywhere within the Building Area.

4.2 Land and Building Development Standards.

4.2.1 Type and Design of Building and Other Improvements. All Improvements in the Property shall be constructed in conformity with the Approved Plans, and in compliance with the applicable provisions of this Declaration and all applicable Governmental Requirements. Prior to constructing any Improvements on a Lot, each Owner shall submit to Declarant for its approval (i) grading, drainage and utility plans, and (ii) the plans for construction of all other Improvements for a Lot, including plans for any Building (including elevations), plans for Landscaping Improvements, and plans for Access Areas (collectively, the "Proposed Plans"). The Proposed Plans shall (i) depict exterior Building elevations that are architecturally and aesthetically compatible with first class commercial retail and office centers, and (ii) indicate that the design and construction of the Building(s) shall be of high quality. Declarant's approvals may be withheld, conditioned or delayed in its sole discretion. Declarant may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to this Section, payable at the time such plans and specifications are so submitted. Throughout the construction, Declarant shall have the right to confirm that the Building and all other Improvements are being constructed in compliance with the Approved Plans and otherwise as required by this Section 4.2. No Improvements upon a Lot may be constructed without Approved Plans and Declarant permission. Unless specifically approved in writing by Declarant, Improvements shall not be modified, altered or otherwise changed from the Approved Plans (provided, however, a modification to a Utility Line that does not impact any other Lot shall not require additional approval). There shall be no interference with the established drainage pattern and system over any portion of the Lots unless adequate provision is made for proper drainage and such interference is approved by all affected Owners. All impervious surface Improvements to be constructed by an Owner within its Lot shall be designed and permitted so that the storm water originating from such paved areas shall be collected and routed into the existing or future Common Drainage System.

4.2.2 Pads. Proposed Plans for each Pad, which must be approved by Declarant in its sole discretion, shall comply with all of the following requirements: (i) no more than one (1) Building shall be permitted on each Pad, (ii) except for Signs located in Sign Easement Areas, no monument or pylon signs shall be permitted on any Pad, except for monument signs that do not exceed six (6) feet in height, (iii) each Pad shall be self-parked at a ratio of no fewer than five (5) parking spaces per 1,000 square feet of Buildable Square Footage upon such Pad, (iv) no Buildings shall exceed one (1) story or twenty eight (28) feet in height (exclusive of singular, reasonable architectural elements which may protrude higher; provided, that such architectural elements shall not be wider than twenty percent (20%) of such Building's roofline or exceed an additional four (4) feet in height) as measured from the lowest grade on the Pad. Declarant shall have the right to approve any Proposed Plans that do not comply with any of the foregoing requirements, which approval may be withheld in its sole and absolute discretion. If such approval is requested, but is neither given nor denied within thirty (30) days after the date of such request, then approval

shall be deemed to have been denied. A waiver as to one Owner or one situation does not constitute a waiver as to another Owner or another situation.

4.3 Construction Requirements.

4.3.1 All construction activities performed within the Property shall be performed in compliance with all applicable Governmental Requirements. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner.

4.3.2 All work performed in the construction, repair, replacement, alteration or expansion of any Improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay access to or from the Property, or any part thereof, to or from any public right-of-way. Unless otherwise specifically stated herein, the Person contracting for the performance of such work (“Contracting Party”) shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Common Areas and Facilities damaged or destroyed in the performance of such work.

4.3.3 The Contracting Party shall not permit any mechanics’, materialmen’s or other professional services liens (as contrasted with consensual monetary liens, such as construction and/or permanent financing) to stand against for any work done or materials furnished in connection with the performance of the work described above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

4.3.4 Staging for the initial construction of a Building, or the replacement, alteration or expansion of any Building, sign or Common Areas and Facilities located in the Property including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall (i) be located solely on the constructing Owner’s Lot, or (ii) be limited to specific areas of the Property approved in writing by Declarant.

4.3.5 The Contracting Party shall provide Declarant with at least twenty (20) days’ prior written notice of the commencement of any work at the Property. Declarant may take those steps allowable under Governmental Requirements to protect its interests from the imposition of a lien or other encumbrance arising out of or related to the Contracting Party’s work at the Property.

5. Manager’s Rights and Responsibilities.

5.1 Manager’s Maintenance and Repair of Common Areas and Facilities. Declarant may appoint a Manager to maintain, or cause to be maintained the Common Areas and Facilities in an attractive condition and good state of repair and reasonably free of refuse and debris, and in compliance with all applicable Governmental Requirements, and the provisions of this Declaration. The operation, maintenance and repair obligations assigned to the Manager may include but need not be limited to the following:

5.1.1 Common Roads. Repairing and maintaining the Common Roads, including, without limitation, replacement of base, skin patch, resealing, resurfacing and, if necessary, restriping such areas, and also including maintaining, cleaning and replacing (as needed) any directional or stop signs or markers located within the Common Roads that are installed by Declarant or Manager, but not those that may be installed by an Owner, as any such Owner retains such maintenance responsibility for its signs under Section 3.2. For the purpose of this Section 5, an overlay of the surface of the Common

Roads shall be considered a maintenance item. Manager's repair and maintenance responsibilities under this Section 5 may include (i) replacement, if needed, of the Common Roads, and (ii) the periodic sweeping and removal of debris to the extent reasonably necessary to keep the Common Roads in a clean and orderly condition.

5.1.2 Sign Easement Areas. Maintaining and repairing the Sign Easement Areas, including the Signs located thereon. Costs incurred for original construction of the Sign Easement Areas and of Signs shall be as set forth in Section 3.6. Manager may be assigned, with respect to the Sign Easement Areas, the maintenance and replacement of landscape plantings, trees and shrubs located thereon; providing water for landscape irrigation through a system, including performing any modifications to such system to satisfy governmental water allocation or emergency requirements.

5.1.3 Greenscape Areas. Costs incurred by Declarant for original and future installation of, and maintenance of, the landscaping (including grass, shrubs and trees) and any lighting facilities shall be equitably allocated among the Owners as determined by Declarant or Manager. Manager may be assigned the maintenance and replacement of landscape plantings, trees and shrubs, related improvements, and any lighting facilities located thereon (collectively, the "Greenscape Area Improvements"); providing water for landscape irrigation through a system, including performing any modifications to such system to satisfy governmental water allocation or emergency requirements. "Greenscape Areas" means those areas of the Property designated as such from time-to-time by Declarant and that are located (i) adjacent to any public roadway, (ii) within the adjacent right-of-way (but only to the extent Manager is allowed to provide and maintain landscaping or lighting in such right-of-way area), (iii) included as part of any Common Road; or (iv) within the right-of-way of any existing or future public roadway in the Property (but only to the extent Declarant or Manager is allowed to provide and maintain landscaping or lighting in such right-of-way areas).

5.1.4 Lighting. Maintaining, cleaning and replacing lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, as applicable that may be located within the Common Roads or the Sign Easement Areas or the Greenscape Areas.

5.1.5 Obstructions. Keeping the Common Roads free from any obstructions, unless such obstruction is permitted under the provisions of this Declaration.

5.1.6 Common Drainage System. Maintaining (including keeping free and clear of debris) and repairing the Common Drainage System, excluding any facilities located on a specific Lot for the sole benefit of the Owner of such Lot, which shall be maintained by such Owner at its sole cost and expense.

5.1.7 Utility Lines and Sanitary Sewage System. Maintaining and repairing the portions of the Utility Lines and sanitary sewer system which serve and/or are used by more than one Lot.

5.2 Manager's Maintenance and Repair of Lots. If at any time an Owner is not maintaining its Lot, including any Building and Improvements thereon, in accordance with Sections 6.10 or 6.11 below, as Manager may determine in its reasonable discretion, Manager may, without obligation, maintain or repair any improvements on such Lot at the sole cost and expense of the Owner. Before exercising its "self-help" right described above, Manager shall give such Owner the prior written notice and opportunity to cure required by Section 14.12 below. If Manager does not pursue its "self-help" right, Manager shall use commercially reasonable efforts to enforce the terms of this Declaration using other appropriate means, including foreclosure of liens or civil litigation. Expenses incurred by Manager under this Section 5.2 shall be collected in the same manner as described in Section 8 below for Assessments.

5.3 Capital Improvements. Manager may make such capital improvements as it reasonably deems necessary to maintain the character and economic viability of the Business Park.

5.4 Contracting for Maintenance. Manager shall contract for and pay for all of the items set forth in Section 5 (the expenses therefor, along with insurance expenses arising under Section 11 and the Service Charge, are sometimes collectively being referred to as “Common Expenses”). A copy of all contracts entered into by Manager for such services shall be provided to any Owner upon written request. With respect to those Common Expenses that may vary depending on the vendor selected by Manager, Manager agrees to use commercially reasonable efforts to engage qualified vendors willing to provide such products or services for a fair and reasonable price.

5.5 Nonprofit Entity in the Future. Declarant may, at any time and in its sole discretion, create a nonprofit entity and designate such entity as the Manager. If, in Declarant’s sole discretion, Declarant structures such entity as an owners association, each Owner hereunder shall be a member thereof in accordance with the governing documents for such entity, which governing documents may be drafted and filed by Declarant in its sole discretion. Notwithstanding the foregoing, Declarant is under no obligation to create an association of owners, and Declarant may retain all control and membership in Manager, regardless of whether it is a special purpose nonprofit entity.

5.6 Acceptance of Common Areas and Facilities. Declarant may, at any time and in its sole discretion, deed, transfer, or otherwise convey the Common Areas and Facilities or any Lot it owns to Manager, and Manager shall accept such conveyance and assume all obligations and responsibilities with respect to ownership of such Common Areas and Facilities.

5.7 Liability. The Manager shall not be liable to any Owner for any damage, loss or liability suffered or claimed on account of any act, omission or negligence of the Manager with respect to any such person or entity so long as the Manager has acted in good faith without intentional misconduct or fraud on its part.

6. Operation of the Property.

6.1 Permitted Uses. Except as otherwise provided in this Declaration and subject to the terms of this Declaration, any Lot or portion thereof, or any Structure erected thereon shall be used or permitted to be used, temporarily or permanently, only for those purposes as permitted pursuant to the applicable Governmental Requirements as may apply to the Property from time-to-time, but expressly excluding, however, any use for which a special exception, variance, or reclassification by petition is required under the applicable Governmental Requirements as may apply to the Property, as the same may hereafter from time-to-time be amended, unless (i) such use as may be allowed pursuant to such special exception, variance, or reclassification is approved in writing by Declarant, which may be withheld, conditioned, or delayed, or Declarant is applying for and prosecuting the obtaining thereof, and (ii) such special exception, variance, or reclassification is finally granted by proper Governmental Authorities (collectively, “Permitted Uses”). Notwithstanding the foregoing, Declarant reserves the right, however, to further limit or restrict the use of any Lot or Lots in accordance with the other provisions of this Declaration.

6.2 Prohibited Uses. No use shall be permitted in the Property except for the Permitted Uses set forth in Section 6.1 above. In addition, no use shall be permitted in the Property which is inconsistent with the operation of a first class commercial development, even if it is permitted by Section 6.1 above. Without limiting the generality of the foregoing, and even if it is permitted by Section 6.1 above, the following uses are expressly prohibited:

6.2.1 any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any Building in the Property, an operation primarily used as a storage warehouse operation and any assembling, manufacturing, or distilling;

6.2.2 any refining, smelting, agricultural or mining operation;

6.2.3 any “second hand” store, “surplus” store, or pawn shop;

6.2.4 any mobile home Property, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance;

6.2.5 any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

6.2.6 any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Property is located;

6.2.7 any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation;

6.2.8 any single family dwellings, townhouses, condominiums, other multi-family units, motels and budget hotels, but non-budget hotels may be Permitted Uses (by way of example but not limitation, any Marriott, Hilton, Starwood, Hyatt or comparable hotel brand shall constitute a “non-budget” hotel);

6.2.9 any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the foregoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the floor area of the pet shop;

6.2.10 any mortuary or funeral home;

6.2.11 any establishment selling or exhibiting “obscene” or otherwise pornographic material;

6.2.12 any establishment selling or exhibiting drug-related paraphernalia or which exhibits, either live or by other means to any degree, nude or partially clothed dancers;

6.2.13 any massage parlor or similar establishment other than a national or regional concern, such as Massage Envy;

6.2.14 any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall;

6.2.15 any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to

students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on site employee training by an Occupant incidental to the conduct of its business in the Property;

6.2.16 any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of the Premises, if any, and any recycling facility required by Governmental Requirements in connection with an otherwise Permitted Use);

6.2.17 any gambling facility or operation, including but not limited to off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall (notwithstanding the foregoing, this prohibition shall not apply to government sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the retail business operation being conducted by the Occupant;

6.2.18 any use that includes the storage of explosives;

6.2.19 any outside storage; and

6.2.20 any use in violation of any applicable Governmental Requirements.

The uses proscribed in this Section 6.2 are “Prohibited Uses.”

6.3 Antennas. No antenna for transmission or reception of television signals, cellular phone service, or any other form of electro-magnetic radiation or any other equipment for provisions of communications services (“Communications Equipment”) shall be erected, used or maintained on any Lot outside any Building, whether attached to a Structure or otherwise, without the prior written approval of the Declarant, which may be granted or withheld in its sole discretion. Declarant may specify the placement of all Communications Equipment. Declarant reserves the exclusive right to allow commercial providers (“Third Parties”) of communications services for the placement and operation of towers, antennae, and other related equipment (“Third Party Communications Equipment”) to place any Third Party Communications Equipment on the Property to service more than the property upon which the Third Party Communications Equipment sits, and Declarant may enter into an easement with one or more Third Parties over any of the Property owned by Declarant to do so. If any Occupant installs any Communications Equipment on the rooftop or in other portions of any Building, such Occupant acknowledges and agrees that the use of any such Communications Equipment shall in no way interfere with the operation of the Third Party Communications Equipment, and that the Third Party is an express beneficiary of the non-interference covenant contained in this Section 6.3 and that the Third Party shall be entitled to bring an action directly against any Occupant in the event of a breach of such covenant. Each Occupant acknowledges and agrees that such Communications Equipment is solely limited to Occupant’s own use in the conduct of its business from the applicable Lot and may not be used for the use of or sale to third parties. Any Occupant installing Communications Equipment shall indemnify, defend, and hold harmless Declarant (and Declarant’s directors, officers, shareholders, employees, partners, members, managers, agents, contractors, affiliates, successors and assigns) from all expenses, costs, damages, losses, claims, or other expenses and liabilities arising from any prohibited interference. If such interference occurs, the interfering Occupant agrees to suspend the use of its Communications Equipment until the interference has been corrected to the satisfaction of Declarant and the Third Party. Any such Occupant shall be responsible for all costs associated with any tests deemed necessary to resolve any and all interference caused by its Communications Equipment, or any other use that is not permitted by this Section 6.3. If such interference has not been corrected within twenty (20) days, Declarant may require such Occupant to remove those components of its communications Equipment causing such interference, or Declarant shall enjoin such interference at such Occupant’s sole cost and expense.

6.4 Hazardous Materials. No Occupant shall use, or permit the use of, Hazardous Materials on, about, under or in the Property, except those Hazardous Materials customarily used with respect to any of the Permitted Uses, provided that any such use shall at all times be in compliance with this Declaration and all Environmental Laws. If any Owner becomes aware of or receives notice or other communication concerning any actual, alleged, suspected, or threatened violation of Environmental Laws, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction relating to the same, then such Owner shall promptly notify Declarant and Manager of the same. Each Owner agrees to indemnify, defend, reimburse and hold harmless, the Manager, Declarant (and the directors, officers, shareholders, employees, partners, members, managers, agents, contractors, affiliates, successors and assigns of such Persons) from and against all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs, and expenses of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the existence at Hazardous Materials upon, about, or beneath the Property as the result of the activities or negligence of the indemnifying Owner or its Permittees. The term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) the term "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time-to-time.

6.5 Taxes. Each Owner shall pay directly to the tax collector when due the Real Property Taxes assessed against the Owner's Lot, including the portion of any Common Areas and Facilities on such Owner's Lot; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of such taxes and assessments, provided that such Owner will take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within each Lot, including recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien. For purposes of this Declaration, "Real Property Taxes" will mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any Governmental Authority upon the land within each Lot and/or any Improvements therein or thereon.

6.6 Parking. All Buildings or other Improvements constructed on any Lot shall be developed to comply with the Governmental Requirements governing parking for the use proposed for the Lot. The parking area on any Lot shall provide at least such number of parking stalls as required to comply with Governmental Requirements or as may be required by Governmental Authorities to provide for all required parking for the Buildings located on such Lot, without regard to any parking that may be available on any other Lot. No Lot shall be developed in so intense a manner as to adversely impact the parking available on the other Lots absent an express written agreement with the Owners of such other Lots permitting such.

6.7 Signs. Except with respect to the Signs, the installation of which is governed by Section 3.6, all signs installed at the Property by or at the request of an Owner shall conform to all applicable Governmental Requirements and to the sign criteria for the Property, as such criteria may be adopted and amended from time-to-time by Declarant, and must be approved in writing by Declarant at its sole discretion.

6.8 Animals. No livestock, poultry or other animals shall be kept on any Lot and in no event shall any stable, hutch, barn, coop or other housing or shelter for animals or for the storage of materials be placed or maintained upon any Lot, except as approved by the Declarant in writing.

6.9 Equipment.

6.9.1 Mechanical Equipment. All mechanical equipment, including roof-mounted, shall be enclosed or screened in a manner approved by the Declarant so as to be an integral part of the architectural design.

6.9.2 Roof-mounted Equipment. All roof-mounted equipment, other than the mechanical equipment subject to the provisions of Section 6.9.1, including, but not limited to, vents, hoods and hatches, must blend with the color of the exposed roofing material so that such equipment is as inconspicuous as possible and integral with the roof area of any Building upon which such equipment is mounted to the extent feasible and available at a commercially reasonable cost.

6.10 Landscaping. Each Owner is responsible for maintaining the landscaping located on its Lot mowed, trimmed, watered and free from refuse, rubbish and debris. Each Owner shall install landscaping improvements on its Lot, including among other things, grass, plants, shrubs, trees, flowers and irrigation equipment, in accordance with the Approved Plans for such Lot (the "Landscaping Improvements"). Once in place, the Landscaping Improvements on a Lot shall not be modified without the prior written approval of Declarant. The Owner of each Lot must also provide water for landscape irrigation through a properly maintained system, including performing any modifications to such system to satisfy governmental water allocation or emergency requirements.

6.11 Maintenance of Buildings. Each Owner shall at all times be responsible for the regular maintenance, repair and replacement of the Buildings and Improvements located on its Parcel. All Buildings and Improvements shall be kept and maintained in a clean and attractive condition and in good order, condition and repair. Any damage that is caused by the intentional or negligent acts of one of the Owners or its Permittees, shall be promptly repaired at the sole cost of such Owner.

6.12 Prohibited Activities at the Property. To the maximum extent permitted by law, the following activities are prohibited at the Property:

6.12.1 exhibiting any placard, sign or notice except as expressly permitted under this Declaration;

6.12.2 distributing any circular, handbill, placard or booklet;

6.12.3 soliciting memberships or contributions for private, civic, public charitable or political purposes;

6.12.4 parading, picketing or demonstrating; and

6.12.5 failing to follow regulations established by Manager relating to the use and operation of the Property.

7. Budget Approval.

7.1 No later than sixty (60) days prior to the commencement of a calendar year, Manager shall provide each of the Owners an estimated budget for the succeeding calendar year (the

“Budget”), including the estimated amount of projected Assessments. The Budget shall reasonably identify each of the categories of maintenance and capital costs to be incurred by Manager and shall specify whether project Assessments are General, Special, or Limited.

7.2 If an Owner disapproves the proposed Budget, such Owner shall give written notice to Manager within thirty (30) days of Manager’s delivery of such Budget (the “Budget Objection Notice”), which Budget Objection Notice shall include a reasonably detailed description of what changes, if made, would result in the objecting Owner approving the proposed Budget. If Budget Objection Notices from Owners owning a minimum, in the aggregate, of twenty-five percent (25%) of the acreage by square feet of the Property are not delivered to Manager within such thirty (30) day period, the Budget shall be deemed approved. If Budget Objection Notices from Owners owning a minimum, in the aggregate, of twenty-five percent (25%) of the acreage by square feet of the Property are delivered to Manager within such thirty (30) day period, Manager shall give reasonable consideration to the objections, and unless it has a commercially reasonable basis for not doing so, revise the Budget and resubmit the Budget to the Owners for their approval in accordance with the procedure set forth above.

7.3 The Budget shall provide the basis for Assessments, provided that the amount and nature of Assessments may be adjusted by the Manager to meet changing circumstances and unexpected expenses. The Manager may impose additional Assessments in situations in which additional income for Common Expenses is needed.

8. Assessments.

8.1 Establishment of Assessments. Declarant, so long as it owns any of the Lots, hereby covenants, and each Owner of such Lots by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay Assessments for the purpose of maintaining and repairing the Common Areas and Facilities, providing financial reserves, and providing for such capital improvements as the Manager may from time to time determine. Assessments may be levied against Owners’ Lots as soon as the Owners’ become the owners of such Lots, regardless of whether improvements have been commenced or completed on the Lots. The Assessments levied hereunder, together with interest, costs, and reasonable attorneys’ fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, which lien shall attach and be enforced as provided in Section 9 below. Each such Assessment, together with interest, costs and reasonable attorney’s fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. If more than one person or entity was the Owner of a Lot, the personal obligation to pay such Assessment shall be both joint and several.

8.2 General, Limited, and Special Assessments. General assessments may be levied for regular annual or other periodic charges to properly maintain and repair the Common Areas and Facilities (“General Assessments”). In addition to General Assessments, the Manager may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any repair, replacement, or improvement of any Common Areas and Facilities in or on the Property, including private streets or landscape easements (“Special Assessment”). Any such Special Assessment shall be allocated among the Lots in the same manner as General Assessments and shall be payable over such a period as the Manager shall determine. General Assessments and Special Assessments shall be allocated in accordance with each Owner’s Proportionate Share of the Common Expenses, plus an administrative fee of five percent (5%) of such expenses to cover management and administrative costs (the “Service Charge”). Certain other assessments (“Limited Assessments”) shall be allocated equitably among a subset of Owners that benefits from specific improvements by the Manager and/or Declarant in their sole discretion. A Service Charge shall also be added by the Manager to Limited Assessments. The Manager

shall obtain the consent of Owners owning a minimum, in the aggregate, of seventy-five percent (75%) of the acreage by square feet of the Property prior to assessing any Special Assessment.

8.3 Owners' Payment of Assessments. At the discretion of the Manager, the Owner of each Lot may be billed monthly in advance for its Assessments. The bills shall be due and payable within fifteen (15) days after receipt. Manager may adjust such estimates at any time based upon Manager's experience and reasonable anticipation of costs. Such adjustments shall be effective as of the next payment date after notice is given to the affected Owners at least thirty (30) in advance together with reasonable written evidence supporting such adjustment. If Manager elects to bill the Owners in advance as provided in this Section 8.3, within one hundred twenty (120) days after the end of each calendar year Manager shall deliver to the affected Owners a statement setting forth in reasonable detail the Common Expenses paid or incurred by Manager during the preceding calendar year and each Owner's Proportionate Share. If such statement reveals underpayment of Common Expenses, the Owner of each Lot shall reimburse Manager its Proportionate Share of any such underpayment within fifteen (15) days after receipt of such statement. If such statement reveals an overpayment of Common Expenses, Manager shall, at the option of the Owner of each Lot, either provide a credit against future payments of its Proportionate Share of estimated Common Expenses or reimburse the Owner of each Lot (or its respective Occupants, as it may direct) in the amount of its Proportionate Share of any such overpayment at the time such statement is provided. If Manager elects not to bill the Owners in advance as provided in this Section 8.3, Manager will send periodic billing statements to the affected Owners as and when Common Expenses are actually incurred; provided, however, that such statements shall not be sent more often than monthly. As used in this Declaration, the "Proportionate Share" of the Common Expenses to be borne by an Owner of a Lot shall be the percentage obtained by dividing the acreage by square footage of such Owner's Lot by the aggregate acreage, measured in square feet, of all Lots at the Property, subject to allocation of costs relating to Signs as set forth in Section 3.6.

8.4 Inspection of Records. Any Owner may, upon not less than ten (10) days' prior written notice to Manager, inspect Manager's records for all Common Expenses incurred during the immediately preceding calendar year at Manager's office or at such other location reasonably designated by Manager at any time during reasonable business hours within ninety (90) days following receipt of the annual statement described in Section 8.3. If such inspection reveals an overpayment of Common Expenses (and Manager agrees, which agreement shall not be unreasonably withheld, conditioned or delayed), Manager shall reimburse the Owner of each Lot (or its respective Occupants, as it may direct) its Proportionate Share of any such overpayment within fifteen (15) days after receipt of notice of determination, and of the amount, of such overpayment. If such inspection reveals an underpayment of Common Expenses, the Owner of each Lot shall reimburse Manager its Proportionate Share of any such underpayment within fifteen (15) days after receipt of proper billing in accordance with Section 8.3. Manager's expenses for any calendar year shall be deemed correct if an Owner does not give Manager written notice of any such overpayment or underpayment within the ninety (90) day period provided above.

9. Enforcement Remedies.

9.1 Creation of Lien; Notice of Default; Foreclosure. In the event any Owner fails or refuses to pay an Assessment when due, which failure continues for a period of fifteen (15) days after receipt of such Assessment, such failure shall constitute a default and Manager may, as permitted by law, secure a lien against the Owner's delinquent Lot by recording a notice of default with the _____ County Recorder. A copy of such notice of default shall be given to such Owner and any Mortgagee holding a Mortgage covering such Owner's Lot within ten (10) business days following recordation. Such notice of default shall set forth the unpaid amount, the date such amount became due, the Owner's name and a description of the Lot subject to the lien. Any such lien may be foreclosed judicially or non-judicially in the same manner permitted by applicable law for liens against real property, and shall be subject and

subordinate to (i) each Mortgage recorded at the time such notice of lien is recorded, (ii) this Declaration, (iii) each utility right-of-way or easement existing at the time such notice of lien is recorded, and (iv) any lien for general taxes and other governmental assessments, but shall be prior to all other interests, whether recorded or unrecorded, at the time such notice of lien is recorded. The lien so claimed shall attach from the date of recordation in the amount claimed in the notice of default. In connection with any sale under a non-judicial foreclosure, the party filing the notice of default is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in _____ as trustee for purposes of conducting the sale. The party filing the notice of default shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot.

9.2 Interest. Interest shall accrue from the date the Assessment was due and payable to and including the date such Assessment is paid at the rate equal to the Prime Rate as announced from time-to-time in the Wall Street Journal or, if it no longer exists, in a reasonable similar publication, plus five percent (5.00%) per annum (“Default Interest”). All other defaults for failure to make payments as required under the Declaration shall also accrue Default Interest from the date of default until paid.

9.3 Other Remedies. Manager shall also have the right to recover the Assessment from the Owner personally to enforce any other default under this Declaration against the Owner personally, and to otherwise enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration.

10. Common Areas and Facilities.

10.1 No Obstruction. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, or to prevent a public dedication or the accrual of any rights to the public (as provided in Section 14.1), no Owner shall permit to be constructed or placed across the Common Roads located on such Owner’s Lot any fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded access over any part of the Common Roads, or shall otherwise obstruct or interfere with the free flow of vehicular and pedestrian traffic on such Common Roads.

10.2 Alteration, Relocation or Changes to Common Areas and Facilities. The Owner of a Lot shall be permitted to alter, relocate, or change the configuration of the Access Areas which it owns at any time and from time-to-time, but only upon strict compliance with the provisions of this Section 10.

10.2.1 Any proposed alteration, relocation, or other change shall comply with all applicable Governmental Requirements.

10.2.2 Any proposed alteration, relocation, or other change shall not modify or unreasonably obstruct access between a Lot and any adjacent public road.

10.2.3 The Owner proposing to make any alteration, relocation, or other change shall pay the entire cost of such alteration, relocation or change.

10.2.4 The Owner proposing to make such alteration, relocation, or change may not perform any work on, or stage any work from, any other Lot without the consent of the Owner of such other Lot, which consent shall not be unreasonably withheld, conditioned or delayed.

10.2.5 Declarant or Manager must approve the proposed alteration, relocation, or other change. In connection with obtaining such approval, the Owner proposing to make such alteration, relocation or change shall provide copies of its preliminary plans to the Declarant or Manager prior to

commencing such work for review and approval by the Declarant or Manager. In the event an Owner (the "Submitting Owner") submits a preliminary plan to the Declarant or Manager for its consent as required by this Section 10.2.5, such preliminary plan shall be deemed not approved if not disapproved in writing within thirty (30) days of the delivery of the preliminary plans to the Declarant or Manager. In the event the Declarant or Manager disapproves of such preliminary plans, the Declarant or Manager shall, within such thirty (30) day period, deliver to the Submitting Owner the written objections to the preliminary plans which objections shall include a reasonably detailed description of what changes, if any, and if made, would cause the Declarant or Manager to give its approval of the preliminary plans. The Submitting Owner shall revise the preliminary plans and resubmit them to the Declarant or Manager for its approval in accordance with the procedures set forth above in this Section 10.2.5. Notwithstanding anything above to the contrary, an Owner shall not be required to obtain the consent of the Declarant or Manager to make any alteration, relocation, or modification on such Owner's Lot if such alteration, relocation, or modification is required by Governmental Requirements; provided, however, that, to the extent the Owner has any discretion regarding the manner of the alteration, relocation, or modification within the parameters of what is required by the Governmental Requirements, the Declarant or Manager shall have approval rights over the exact implementation of the alteration, relocation, or modification.

11. Insurance and Indemnity.

11.1 Manager shall maintain or cause to be maintained in full force and effect at least the following minimum insurance coverage in Constant Dollars: Commercial General Liability insurance with a combined single limit of liability of \$1,000,000.00 for bodily injury, personal injury and property damage, arising out of any one occurrence.

11.2 Prior to commencing any construction activities within the Property, each Owner and Manager shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

11.2.1 Workers' compensation and employer's liability insurance:

- (i) Worker's compensation insurance as required by any applicable Governmental Requirements.
- (ii) Employer's liability insurance in the amount of \$1,000,000.00 each accident for bodily injury, \$1,000,000.00 policy limit for bodily injury by disease, and \$1,000,000.00 each employee for bodily injury by disease.

11.2.2 Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

- (i) Required coverages:
 - (a) Premises and Operations;
 - (b) Products and Completed Operations;
 - (c) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents;

- (d) Broad Form Property Damage (including Completed Operations);
 - (e) Explosion, Collapse and Underground Hazards; and
 - (f) Personal Injury Liability.
- (ii) Minimum limits of liability:
- (a) \$1,000,000.00 each occurrence (for bodily injury and property damage).
 - (b) \$1,000,000.00 for Personal Injury Liability.
 - (c) \$1,000,000.00 aggregate for Products and Completed Operations.
 - (d) \$2,000,000.00 general aggregate applying separately to the Property.

11.2.3 Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000.00 each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

11.2.4 The contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000.00. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.00. The contractor's liability insurance shall name the Declarant and Manager as additional insureds, and also be primary to and noncontributory with any similar coverage they have.

11.2.5 Owners shall carry Workers Compensation insurance if statutorily required. Owners and contractors shall provide a waiver of subrogation in favor of the Manager and Declarant on their Workers Compensation coverage.

11.3 Effective upon the commencement of construction of any Improvements on its Lot and so long as Improvements exists, each Owner shall maintain or cause to be maintained in full force and effect, policies of property insurance covering loss of or damage to the Improvements located on its Lot in the full amount of their replacement value, with such policies providing protection against loss or damage due to perils covered by a "Causes of Loss-Special Form" (or equivalent) policy. For purposes of this Declaration, a Lot is deemed "developed" when Improvements such as Building(s) and landscaped and paved areas, have been constructed thereon, and such Lot is available for use and occupancy.

11.4 Each Owner of a Lot shall maintain or cause to be maintained in full force and effect, a policy of Commercial General Liability insurance (or equivalent) with respect to such Owner's Lot, the business operated by such Owner and any Permittees of the Owner on its Lot. The minimum amount of such insurance in Constant Dollars shall be Three Million Dollars (\$3,000,000.00) per occurrence. Each such policy shall name Declarant and Manager as an additional insured, and each Owner shall provide Manager with an appropriate "additional insured" endorsement to such Owner's liability insurance policy (in a form reasonably acceptable to Manager). Such coverage shall be primary to and noncontributory with any similar coverage held by Declarant and Manager.

11.5 All insurance required by this Section 11 shall be written on an occurrence basis and procured from companies with a Financial Strength Rating of “A” or better and a Financial Size Category of “X” or larger, based on the most recent published ratings of the A.M. Best Company (or comparable rating) which are authorized to do business in the state where the Property is located. All insurance may be provided under (i) an individual policy covering the Property, or (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Person; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Ten Million Dollars (\$10,000,000.00) in Constant Dollars, then such insuring Person shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Ten Million Dollars (\$10,000,000.00) in Constant Dollars. The insuring Person shall provide, upon written request, a certificate of insurance (in form acceptable to Manager) executed by an authorized officer or agent of the insurer, certifying that the required insurance is in full force and effect. The insuring Person shall be responsible for the payment of any and all applicable deductibles, and in no event shall any deductible or self-insured retention amount exceed Fifty Thousand Dollars (\$50,000.00) in Constant Dollars without the prior written consent of Manager.

11.6 In the event any Owner fails to maintain the insurance coverage required in this Declaration, Manager may, but shall have no obligation to obtain, comparable coverage for Manager’s benefit at the defaulting Owner’s expense. The premiums paid for such insurance, plus the Service Charge, shall be reimbursed by the defaulting Owner immediately upon presentation of Manager’s bill.

11.7 Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the property insurance required to be carried under this Section 11. Such 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 property of any Owner. Because the above mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of property insurance, written notice of the terms of such mutual waivers, and shall have such insurance policies properly endorsed, if necessary, to prevent invalidation of such insurance coverage by reason of such waiver.

11.8 The Owner of each Lot hereby agrees to indemnify, defend and hold harmless Declarant, Manager, and the Owners from and against any and all liability, claims, damages, expenses (including reasonable attorneys’ fees and reasonable attorneys’ fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the negligent or willful act or omission of the indemnifying person, its tenants, subtenants, agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

11.9 An Owner shall have the right to satisfy its insurance obligations under this Declaration by means of self-insurance, but only so long as: (i) such self-insurance is permitted under all laws applicable to such Owner and/or the Property at the time in question; (ii) such Owner maintains a tangible net worth (as evidenced by its financial statements on file) of not less than Five Hundred Million Dollars (\$500,000,000.00); (iii) such Owner maintains a Moody’s rating of Baa or better or a Standard & Poor’s rating of BBB or better (in case of a public company); (iv) unless such information is already generally available to the public through filings with the U.S. Securities and Exchange Commission, such Owner shall, not less than annually, provide Manager an audited financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth of such Owner; and (v) such self-insurance provides for loss reserves that are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. “Self-insure”

shall mean that such Owner is itself acting as though it were the third-party insurer providing the insurance required under the provisions of this Declaration, and such Owner shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Declaration. To the extent an Owner chooses to provide any required insurance by “self-insurance,” then such Owner shall have all of the obligations and liabilities of an insurer, and the protection afforded Declarant, Manager, and the other Owners, shall be the same as if provided by a third-party insurer under the coverages required under this Declaration. Without limiting the generality of the foregoing, all amounts which such Owner pays or is required to pay and all losses or damages resulting from risks for which such Owner has elected to self-insure shall be subject to the waiver of subrogation provisions of Section 11.7 above, and shall not limit such Owner’s indemnification obligations set forth in Section 11.8 above. In the event that an Owner elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from a third-party insurer, such Owner shall undertake the defense of any such claim, including a defense of Declarant and Manager, at such Owner’s sole cost and expense, and use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by such Owner to self-insure. In the event that an Owner elects to self-insure, such Owner shall provide Manager with certificates of self-insurance in form reasonably acceptable to Manager specifying the extent of self-insurance coverage.

12. Repurchase Rights. In the event that after the expiration of three (3) years from the date of execution of a deed by the Declarant conveying any Lot, any grantee or its heirs, successors or assigns, shall not have completed the construction of a permanent Building upon said Lot, the Declarant shall have the right to repurchase the Lot at the same price as Declarant sold the Lot, by giving the grantee or then Owner of the Lot sixty (60) days prior notice of the Declarant’s election to do so, in which event closing shall take place within such sixty (60) day period and the parties shall execute such documents as shall be necessary in order to consummate the same. The provisions of this Section 12 are subject and subordinate to the rights of Mortgagees holding liens on any Lot, including Mortgagees which acquire title to any portion of any Lot by foreclosure or deed-in-lieu of foreclosure.

13. Assignment Allowed. Any or all of the interests, rights and powers (including discretionary rights and powers and the powers of consent and approval) (collectively referred to as the “Declarant’s Reserved Powers”) herein reserved by or conferred upon the Declarant may be assigned or transferred by the Declarant, at its election and in its sole discretion, to any one or more Persons agreeing to accept and assume the duties of the Declarant pertaining to the Declarant’s Reserved Powers so assigned or transferred. Any such assignment or transfer of the Declarant’s Reserved Powers may be made by the Declarant as to all or any part or parts of the Property and may be to different Persons in Declarant’s sole discretion. No such assignment or transfer shall be deemed effective unless such assignment or transfer shall be evidenced by an appropriate written instrument in recordable form (i) duly executed by the Declarant, (ii) duly executed by such assignee or transferee and containing the agreement of such assignee or transferee to accept the same and assume the duties of the Declarant thereunder, (iii) which is recorded among the Official Records, and (iv) expressly and specifically refers to and identifies the Declarant’s Reserved Powers so assigned and transferred. Any such instrument may be subject to such limitations, conditions, reservations and provisions as the Declarant may set forth therein and may provide, among other things, for the future or further assignment or transfer of the Declarant’s Reserved Powers to others by the assignee or transferee named therein. No such assignment or transfer shall be deemed to arise by implication. When the Declarant or its assignee pursuant to this Section 11 shall no longer be the Owner of any part of the Property, all rights and powers of the Declarant (or such assignee) shall automatically devolve upon, and be exercisable by, the Declarant’s Successor.

14. Miscellaneous.

14.1 No Public Dedication; Effects of Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property or of any Lot or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of Declarant, on behalf of Declarant and its successors and assigns, that this Declaration shall be strictly limited to and for the purposes herein expressed. Each Owner shall have the right to close, if necessary, all or any portion of the Common Road on its Lot from time-to-time for the period of time as may be necessary, in the reasonable opinion of Owner, to prevent a dedication thereof or the accrual of any rights of the public therein; provided, however, prior to such closing (which closing, in any event, shall be for as short a period as is necessary to prevent such dedication or accrual of such public rights), such Owner shall give notice of such closing to, and coordinate such closing with, Manager and such closing shall be subject to Declarant or Manager's approval as to the time and duration of such closing. No Person may dedicate to public use or convey to a Governmental Authority any Common Area without the consent of the Declarant, which may be withheld, conditioned or delayed for any reason. Declarant reserves unto itself the right to dedicate any and all of the Common Roads to public use. If any land within the Property consisting of the Common Areas and Facilities is dedicated for public use or otherwise conveyed to a Governmental Authority, such land will, upon such dedication or other conveyance, no longer be part of the Property. Any such exclusion from the Property will be automatic without the necessity of a recorded amendment to this Declaration or other consent or approval of Declarant or any other Owner.

14.2 Duration. This Declaration shall remain in full force and effect for a period of ninety-nine (99) years from the Effective Date (the "Primary Period"), and thereafter shall, as then in force, be continued automatically for successive periods of twenty (20) years each (each such period being referred to as an "Extension Period") and without further notice, and without limitation, unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, Declarant delivers to any other Owners in the Property written notice of termination, in which event this Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect. Upon termination of the Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that may exist under this Declaration with respect to any liability, or obligation, accrued or otherwise arising, or to be performed under this Declaration prior to the date of such termination, and, provided further, that all of the easements and the rights and duties related thereto as provided in Section 3 shall continue in effect in perpetuity as to those easements actually in use at the time of the termination of this Declaration until such time as such easements are abandoned or ceased to be used to serve a Lot in the Property.

14.3 Modification and Termination. Except as otherwise expressly provided in Section 14.2 with respect to a possible termination, or in Sections 14.4, 14.5, or other provisions giving specific rights to the Declarant, this Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the written consent of the Owners of Lots comprising at least sixty-six and two-thirds percent (66 2/3%) of the aggregate acreage in square footage of all Lots in the Property.

14.4 Rights of Declarant. Notwithstanding anything to the contrary in Sections 14.2 or 14.3, so long as the Declarant or an entity owned wholly by the Declarant or Affiliate of the Declarant owns any portion of the Property, no such termination, extension, modification or amendment of this Declaration shall be effective without the written approval of the Declarant in its sole discretion.

14.5 Changes and Modifications by Declarant. Declarant shall have the right, at any time as long as it owns any portion of the Property, without the consent of any Owner or any other party

and in its sole discretion, to modify, amend or change any of the provisions of this Declaration as Declarant may deem necessary or desirable: (i) to correct errors or omissions herein; (ii) to bring any provision of the Declaration into compliance with any applicable governmental statute, rule, regulation, or judicial determination which is in conflict herewith; (iii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property; (iv) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee such mortgage loans; (v) to satisfy the requirements of any governmental or quasi-governmental agency; or (vi) in response to changing market conditions. Declarant shall also have the right, at any time as long as it owns any portion of the Property, without the consent of any Owner or any other party and in its sole discretion, to modify, amend or change any of the provisions of this Declaration as may be requested by an Owner or any contract purchaser of a Lot. Notwithstanding the foregoing, no modification, amendment or change otherwise permitted by this Section 14.5 shall adversely affect in a material manner the value of an Owner's Lot or substantially increase the financial obligations of any Owner without the prior written consent of the affected Owner(s) and all Mortgagees of Mortgages encumbering the Lots owned by the affected Owner(s). By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in the Lots, each and every contract purchaser, Owner, Mortgagee or other lienholder or party having a legal or equitable interest in any Lot does automatically and irrevocably name, constitute, appoint and confirm the Declarant as attorney-in-fact for the purpose of executing any such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein. A copy of any such agreement, document, amendment, supplement or other instrument shall be provided to all affected Owners. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all Lots and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant at all times as long as it is owns any portion of the Property.

14.6 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

14.7 Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

14.8 Interpretation. Whenever the context requires construing the provisions of this Declaration, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Sections refer to the Sections of this Declaration. This Declaration shall be governed by and construed in accordance with the laws of the State of _____, without regard to its principles of conflicts of law.

14.9 Default by an Owner or Manager. If any Owner fails to comply with the provisions of this Declaration, Manager may (but is not obligated to), after giving at least fifteen (15) days' written notice to the defaulting Owner (or, in the event such lack of compliance relates to a non-monetary obligation which cannot reasonably be performed within such period and it is diligently pursuing compliance, after

the defaulting Owner has been granted the period of time reasonably necessary to comply with the provisions of the Declaration but fails to achieve compliance within such period of time), perform or cause to be performed such work or pay such sums as are necessary to comply with the terms of this Declaration (commonly known as self-help remedies), and any such self-help remedy shall not diminish any right to pursue any other legal or equitable remedies available under applicable law against the defaulting Owner. In the event such self-help remedies are pursued, all sums reasonably expended and all costs and expenses reasonably incurred by Manager in connection with such payment or performance shall bear interest from the date expended or incurred (as the case may be) at the Default Interest rate until paid or otherwise satisfied in full, and shall be paid promptly to Manager by the defaulting Owner on written demand. No breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration (but such limitation shall not affect any other right or remedy or limit any obligation that any Owner or Manager may have under this Declaration by reason of such breach). If Manager does not pursue its “self-help” remedy, Manager shall use commercially reasonable efforts to enforce the terms of this Declaration using other appropriate means, including civil litigation.

14.10 Restoration.

14.10.1 In the event the whole or any part of the Improvements located on a Lot are damaged or destroyed, the Owner of the Lot to which such damage has occurred shall promptly cause the repair, restoration or rebuilding of the Improvements so damaged or destroyed so that the restored portions of the Lot shall (1) be in the condition existing immediately prior to such damage or destruction, and (2) comply with the applicable requirements of this Declaration. In connection with the above, such Owner shall also promptly remove debris and keep the affected portions of the Lot neat, orderly and well maintained and covered during such repair or reconstruction. Notwithstanding the foregoing, in the event any Building or Improvement is damaged or destroyed to the extent of seventy five percent (75%) or greater, the Owner of such Building or Improvement may, with the consent of Declarant, elect not to restore such damaged or destroyed Building or Improvement, in which event the Owner shall raze the Building or Improvement and landscape the area to a neat and attractive condition consistent with the Property.

14.10.2 Upon any damage or destruction to the Common Areas and Facilities on a Lot, Manager will promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Areas and Facilities. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Areas and Facilities as determined by Manager, the plans or specifications for such work will be subject to the prior written approval of the Owners of the Lots upon which such Common Areas and Facilities are located, which shall not be unreasonably withheld, conditioned or delayed. Manager will use all commercially reasonable due diligence to complete such restoration and repair of the Common Areas and Facilities as expeditiously as possible with as little delay and as little disruption as circumstances permit. The cost of such restoration shall be paid as an Assessment.

14.11 Condemnation. In the event the whole or any part of a Lot is taken by right of eminent domain or any similar authority of law (or conveyed under threat of the exercise of such right), the entire award for the value of the land and improvements so taken shall belong to the Owner of that portion of the Lot so taken. No other Owner shall claim any portion of such award by virtue of any interest created by this Declaration. In the event of a partial taking, the Owner of the portion of the Lot so condemned shall, at its sole discretion, either restore the remaining portion of the Lot owned by such Owner as nearly as possible to the condition existing just prior to such condemnation or repair the Lot not taken and landscape any areas left unimproved in an attractive manner, without contribution from any Owner of the Lot not so taken. If any Mortgagee of any portion of the Lot requires, pursuant to a provision in a Mortgage, that the portion of the award representing compensation for property actually taken, as distinguished from compensation for severance damage to property not taken, be paid to the Mortgagee, then the Owner

required to make such payment to such Mortgagee shall not be obligated to apply such portion of the award to restoration, but shall be required to expend its own funds either to restore the Improvements on the remaining portion of the Lot if restoration is possible, or to raze such Improvements and landscape the area to a neat and attractive condition consistent with the Property.

14.12 Notices. Any notices and requests for approvals or consents and responses thereto required or authorized to be given by the Declarant or any Person subject to the provisions of this Declaration shall be in writing and shall be deemed to be validly served two (2) business days after being sent by certified mail, return receipt requested; one day following deposit with a nationally recognized overnight mail delivery service; or upon actual hand or other delivery to such Person, if addressed as follows:

To the Declarant: _____
c/o _____

With a copy to: _____

To any Person subject to this Declaration:

To the mailing address for real property tax bills shown on the real property tax records of the _____ County, _____ Assessor's Office with respect to the Lot or portion of the Property which is the subject matter of such notice.

The Declarant or any Person entitled to receive any notice pursuant to this Declaration may stipulate from time-to-time for itself an address to be substituted for the above address by the giving of written notice to the other at the last address established pursuant to this Section 14.12.

14.13 Mortgagee Protection.

14.13.1 Priority of Declaration. This Declaration established hereby with respect to each Owner and Lot, shall be superior and senior to any lien placed upon any Lot, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any Person (including, but not limited to, any Mortgagee) who acquires title to any Lot or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

14.13.2 Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure of any arrangement or proceeding in lieu of foreclosure, any Mortgagee under any Mortgage affecting any part of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration.

14.13.3 Notices; Right to Cure. Any Owner, on delivering to the other Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver (by means authorized in Section 14.12), copies of such notice to each affected Mortgagee at

the latest address provided to such Owner by such Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Mortgagee unless a copy of such notice has been delivered to such Mortgagee in accordance with the immediately preceding sentence. Each Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days (or, in the event a default is a non-monetary default which cannot reasonably be cured within such period and Mortgagee is diligently pursuing compliance, within the period of time reasonably necessary to cure the default).

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

14.13.5 Recognition. On request, Declarant agrees to execute, acknowledge and deliver to any Mortgagee an instrument prepared by the Mortgagee concerned, acknowledging that such Mortgagee is entitled to the benefits of this Section 14.13.

14.14 Transfer of Property; Release On Transfer. If any Owner transfers all or any portion of the Property owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Declaration. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's interest in the Property, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Property as of the date of recordation in the Official Records of the instrument effecting such transfer, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

14.15 No Waiver. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. A waiver as to one Owner shall not constitute a waiver as to any other Owner.

14.16 Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be awarded and the unsuccessful party shall pay reasonable attorneys' fees, court costs, and other litigation expenses (including, without limitation, costs of investigation, settlement, expert witnesses, or any additional costs incurred in enforcing this Declaration, and those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

14.17 Force Majeure. Any Owner or other Person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, so long as (but only so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment,

facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Owner or other Person prevented or delayed.

14.18 Not a Partnership; No Third Party Beneficiaries. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between Declarant or Manager and any other Owner. There shall be no third party beneficiaries created by the terms of this Declaration.

14.19 Estoppel Certificate. Manager and each Owner agree that upon written request (which shall not be more frequent than one (1) time during any calendar year) of any other Owner or Manager, it will issue within thirty (30) days after receipt of such request to such Owner or Manager, or its prospective Mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date:

14.19.1 whether it knows of any default under this Declaration by the requesting party, and if there are known defaults, specifying the nature thereof in reasonable detail;

14.19.2 whether this Declaration has been modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail;

14.19.3 whether this Declaration is in full force and effect;

14.19.4 whether conditions exist which, with the passage of time and/or giving of notice, or both, will become a default by the requesting party and, if so, specifying any such conditions;

14.19.5 whether all sums due by the requesting party to Manager (if the request is to Manager) or any other Owner (if the request is to such other Owner) have been paid as of the date of such request, or specifying such failure; or

14.19.6 whether Manager (if the request is to Manager) or any other Owner (if the request is to such other Owner) has any off-sets, claims, or demands against the requesting party.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has no knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any damages owed to the requesting party for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Expenses for any year it is entitled to do so.

14.20 Security. Neither Manager nor Declarant shall in any way be considered insurers or guarantors of the security within the Property. Neither Manager nor Declarant shall be held liable for any loss or damage for failure to provide security or for the ineffectiveness of any security measure undertaken. Owners and Occupants of any Lot and all Occupants and Permittees of any Owner assume all risks for loss or damage to persons and Improvements on a Lot, and further acknowledge that Manager and Declarant have made no representations or warranties, nor has any Owner, Occupant, or Permittee of any Owner relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems recommended or installed or any security measures undertaken within the Property.

14.21 Venue. Venue for any legal action relating to this Declaration shall lie in the District Court in and for _____ County, _____.

14.22 Rules and Regulations. The Declarant and/or Manager may adopt reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration, provided such rules and regulations do not materially interfere with the approved use of any Lot or constitute a material modification of the provisions of this Declaration.

14.23 Cooperation. Declarant and the Owners shall cooperate in good faith in the implementation and effectuation of this Declaration.

12.24 Entire Agreement. This Declaration constitutes the entire agreement of Declarant with respect to the subject matter thereof, and supersedes all prior agreements, written and oral.

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

DECLARANT

_____, LLC
a _____ limited liability company

By: _____
Its: _____

NOTARY BLOCK

EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plan of Property

[See Attached]

EXHIBIT C

**CONSENT AND SUBORDINATION
TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
GRANT OF EASEMENTS
FOR**

THIS CONSENT AND SUBORDINATION (this "Consent") is attached to and forms part of that certain Declaration of Covenants, Conditions, Restrictions, and Grant of Easements for _____, dated the ___ day of _____, 20__ (the "Declaration") by _____, LLC, a _____ limited liability company ("_____"). All of the capitalized terms used in this Consent shall have the meanings that are set forth for such terms in the Declaration.

THE UNDERSIGNED is the holder of a mortgage on the Property which secures a certain Deed of Trust, Assignment, Fixture Filing and Security Agreement, by _____, LLC, as Trustor, to and in favor of _____ Title Insurance Company, as Trustee, and _____, as Beneficiary, dated the ___ day of _____, 20__, and recorded the ___ day of _____, 20__, as Entry No. _____, in the Recorder's Office for _____ County, _____, as may be amended (the "Deed of Trust"). The Undersigned is also the holder of certain financing statements and assignments of interest in leases recorded against the Property (collectively, with the Deed of Trust, the "Lien Instruments").

THE UNDERSIGNED hereby (1) consents to the Declaration to be recorded on or about the date hereof; (2) consents to the recordation of the Declaration in the official records of the _____ County, _____ Recorder's office; and (3) subordinates the lien and encumbrances of the Lien Instruments to the Declaration, in the same manner and as fully as if its liens had been created subsequent to the date of recordation of the Declaration.

IN WITNESS WHEREOF, the undersigned, by and through its duly authorized and appointed officers, has caused this Consent to be executed, its seal affixed hereto, and delivered as of the ___ day of _____, 20__.

_____,
a _____ banking corporation

By: _____
Its: _____

NOTARY BLOCK

When Recorded Mail To:

**EASEMENT AGREEMENT
(Access and Storm Water Drainage)**

and

**RELEASE
(Original Declaration for _____)**

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into this ___ day of ____, 20__ (the "Effective Date"), by and between _____, a ____ limited liability company ("Company 1"), _____, LLC., a ____ limited liability company ("Company 2") and _____, LLC, a ____ limited liability company ("Company 3"). Company 1 and Company 2 are referred to collectively as "ABC Street Owner." ABC Street Owner and Company 3 are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

- A. Company 1 and Company 2 are the sole owners of an office condominium project located at XXXX ABC Street, _____, _____. The property owned by Company 1 is described more particularly on the attached Exhibit A ("Company 1 Property"), and the property owned by Company 2 is described more particularly on the attached Exhibit B ("Company 2 Property"). The Company 1 Property and Company 2 Property are referred to collectively as the "ABC Street Property."
- C. Company 3 is the owner of certain property adjacent to the ABC Street Property, which is described more particularly on the attached Exhibit C ("Company 3 Property"). The ABC Street Property and Company 3 Property are referred to collectively as the "Properties." The Properties are depicted on a portion of the Company 3 Business Park Plat 'A' attached as Exhibit D.
- D. On or about _____, 20__, _____, LLC, a ____ limited liability company, as the original Declarant ("Original Declarant") executed a Declaration of Covenants, Conditions and Restrictions which was recorded in the Official Records on _____, 20__ as Entry No. _____ (the "Original Declaration"), relating to _____ Subdivision. The property description for the Original Declaration included the ABC Street Property, although neither the ABC Street Owners nor their predecessors executed the Original Declaration.
- E. One of the entrances (the "Company 3 Entrance") providing access (off of _____ Street directly across from _____) to the Properties is located entirely on the Company 3 Property. The other entrance (the "Shared Entrance") also provides access (along the northeast side of the ABC Street Property) to the Properties and is located partially on both of the Properties. The Company 3 Entrance and the Shared Entrance, which are

referred to collectively as the “Two Entrances” are more particularly described on the attached Exhibit E. Exhibit E provides separate legal descriptions for the portion of the Shared Entrance located on the ABC Street Property and the portion of the Shared Entrance located on the Company 3 Property.

- F. Company 3 desires to convey to ABC Street Owner a perpetual easement over the Two Entrances for access; and ABC Street Owner desires to convey to Company 3 a perpetual easement over the Shared Entrance for access.
- H. Company 3 also owns a storm water drainage system, on the Company 3 Property and on additional land owned by Company 3, consisting of drainage pipes and a drainage pond (the “Company 3 Drainage System”).
- I. ABC Street Owner desires to discharge Storm water from their ABC Street Property into the Company 3 Drainage System, and Company 3 desires to provide to ABC Street Owner an easement for such discharge.
- J. ABC Street Owner agrees to grant Company 3 a concurrent easement on the ABC Street Property to construct a connection of the ABC Street Property’s drainage system to the Company 3 Drainage System (the “Drainage Connection”) as depicted in Exhibit F.

NOW THEREFORE, for good and valuable consideration, pursuant to a separate letter agreement and the mutual covenants and promises contained herein, the Parties agree as follows:

AGREEMENT:

1. **Grant of Access Easements.**

(a) Company 3 hereby grants to ABC Street Owner and their agents, customers, invitees, licensees, tenants and employees a perpetual, non-exclusive easement (the “Two Entrances Easement”) for vehicular and pedestrian access, ingress and egress and for no other purpose on, over, and across the Company 3 Entrance and the portion of the Shared Entrance located on the Company 3 Property suitable for vehicular access. The Two Entrances Easement shall be appurtenant to and inure to the benefit of the ABC Street Property and shall be binding upon Company 3 and their successors, assigns and any person acquiring, leasing or otherwise owning an interest in the Company 3 Entrance and that portion of the Shared Entrance located on the Company 3 Property.

(b) ABC Street Owner hereby grants to Company 3 and their agents, customers, invitees, licensees, tenants and employees a perpetual, non-exclusive easement for vehicular access, ingress and egress and for no other purpose on, over, and across the portion of the Shared Entrance located on the ABC Street Property (the “Company 3 Entrance Easement”). The Company 3 Entrance Easement shall be appurtenant to and inure to the benefit of the Company 3 Property and shall be binding upon ABC Street Owner and their successors, assigns and any person acquiring, leasing or otherwise owning an interest in the Shared Entrance.

(c) The Two Entrances Easement and the Company 3 Entrance Easement are referred to collectively as the “Access Easements”.

2. **Improvements to the Properties; Rules and Regulations.** Notwithstanding anything to the contrary in Section 1, ABC Street Owner acknowledges Company 3’s right to develop the Company 3 Property. Company 3 has the right, at its cost, to construct and reconfigure parking on the Company 3

Property Area and to relocate the Two Entrances, including the portion of the Shared Entrance on the ABC Street Property. In the event Company 3 relocates one or both of the Two Entrances, the Parties will execute and record an amendment to this Agreement to reflect such change. Company 3 also has the right, at its cost, to reconfigure the drive aisles on the ABC Street Property as necessary to connect to the drive aisles on the Company 3 Property. Company 3 reserves the right to impose reasonable rules and regulations regarding the vehicular access, ingress and egress, and parking on, over, and across the Company 3 Property and the Two Entrances, providing that any such rules and regulations do not unreasonably affect ABC Street Property Owner's use of their Property.

3. **Subject to All Matters of Record.** The Easements created herein shall be subject to all matters of record or otherwise discoverable by a survey or inspection of the Properties.

4. **Maintenance.** ABC Street Property Owner shall maintain the Two Entrances in a good condition and in accordance with all applicable laws, without reimbursement of any costs or expenses from Company 3, until the earlier of the date when Company 3: (i) elects in writing to maintain the Two Entrances; or (ii) completes construction of the drive aisles and parking stalls on the Company 3 Property. Upon such date, Company 3 shall maintain the Two Entrances in a good condition and in accordance with all applicable laws. ABC Street Owner shall be responsible for thirteen percent (13%) of all maintenance costs relating only to the Two Entrances incurred by Company 3 (the "Proportionate Share") and shall pay Company 3 within thirty (30) days of receipt of an invoice. Each Party grants to the other and their agents a perpetual, non-exclusive easement and right of way for such maintenance over its portion of the Two Entrances appurtenant to the other Party's property within the Two Entrances. The maintenance obligations described in this Section 4 shall include maintenance, repair and replacement of the road base, asphalt paving, curb and gutter, shoulder, striping, sidewalks and/or walkways, landscaped areas, and other elements of the improvements within the Two Entrances, as well as snow plowing and other maintenance activities.

5. **Closing of Easement Property.** Either Party may close any part of the Easements located on its property for such periods of time as reasonably may be necessary to prevent the public from obtaining prescriptive rights or to make repairs or alterations. In such event, the Party seeking to close the area shall provide notice to the other in advance of any such closure. Except as specifically set forth above in this Section 5, no Party shall permit to be constructed or placed on the portion of the Two Entrances located on such owner's parcel any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, that limits or impairs pedestrian or vehicular traffic over any part of the Properties, or shall otherwise obstruct or interfere with the free flow of such traffic.

6. **Grant of Storm Water Drainage Discharge Easement.** Company 3 hereby grants to ABC Street Owner a non-exclusive easement allowing ABC Street Owner to discharge Storm Water Runoff into the Company 3 Drainage System (the "Storm Water Easement"). Such discharge of Storm Water Runoff shall be diverted by ABC Street Owner into the Drainage Connection to be constructed by Company 3 at the southern corner of the _____ Street Property. No Storm Water Runoff may be discharged by ABC Street Owner into the Company 3 Drainage System or onto the Company 3 Property other than at the Drainage Connection or such other connection point as may be designated by Company 3 to ABC Street Owner from time to time, and no discharges may be made into the Company 3 Drainage System of substances other than Storm Water Runoff. "Storm Water Runoff" shall consist of runoff (from parks and yards, sidewalks, streets, driveways, parking lots, and other structures on the ABC Street Property) comprised solely of water from rain, snow, hail, sleet, or any other natural precipitation ("Storm Water"). Such Storm Water Runoff shall not exceed historic rates of flow of such Storm Water Runoff, which, for purposes of this Agreement, are agreed to be not in excess of .2286 cubic feet per second. ABC Street Owner agrees to follow such reasonable rules and procedures as Company 3 may specify, from time to time, relating to use of the Company 3 Drainage System. In the event municipal,

state or federal regulations or law allows, or even requires, additional discharge, ABC Street Owner, without the prior written consent of Company 3, shall not be allowed to discharge additional Storm Water or other substances into the Company 3 Drainage System.

7. **Construction and Maintenance of Drainage System Improvements.** The Parties recognize and acknowledge that portions of the Company 3 Drainage System have not yet been completed. The Drainage Connection will be constructed by Company 3 and its agents at its expense, and upon completion of the Drainage Connection, the Drainage Connection will become property of ABC Street Owner. ABC Street Owner grants Company 3 a non-exclusive easement across such portions of the ABC Street Property as may be reasonably necessary to construct and install the Drainage Connection. Company 3 agrees to return said portions to as near their original pre-construction conditions as reasonably possible, and to keep the ABC Street Property free from mechanics' lien claims or similar liens arising on account of any act by or on behalf of Company 3.

8. **Maintenance of Connection Pipe and Company 3 Drainage System.** Company 3 agrees to provide maintenance for the Company 3 Drainage System. ABC Street Owner shall pay all costs of maintenance, repair, and reconstruction of their Drainage Connection to the boundaries of their property lines. ABC Street Owner additionally agrees to pay a Proportionate Share (determined to be 13%) of the costs of maintaining, repairing, replacing, and upgrading any and all portions of the Company 3 Drainage System through which storm water discharged from the ABC Street Property directly flows, including the Storm Water pond and associated out fall, but excluding future construction of and relating to drainage connections outside the boundaries of their property lines. ABC Street Owner shall pay Company 3 within thirty (30) days of receipt of an invoice.

9. **Hazardous Materials and Other Liability.** ABC Street Owner will discharge only Storm Water into the Company 3 Drainage System. ABC Street Owner agrees that they will not discharge, or allow to be discharged, Hazardous Materials from ABC Street Property into the Company 3 Drainage System. "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local, and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time. Company 3 shall have the right immediately to clean up and/or repair damage caused by ABC Street Owner's violation of this provision, or to cause ABC Street Owner to clean up and/or repair said damages; however, if time reasonably permits, the ABC Street Owner will be provided written notice and the first option to cure, clean up and/or repair the damage. The ABC Street Owner shall be responsible for all said costs of clean-up and/or repairs. Company 3 shall have the right at any time to terminate the Drainage Connection if ABC Street Owner violates these provisions, and if terminated ABC Street Owner shall indemnify and hold Company 3 harmless against any consequences of said termination. If a Storm Water Permit is required for the activities on and/or discharges from the ABC Street Property, ABC Street Owner agrees to obtain that permit and comply with it.

10. **Definition of Easements.** The Access Easements defined in Section 1 (c) and the Storm Water Easement defined in Section 6 are collectively referred to as the "Easements".

11. **Indemnification and Insurance.** Each Party hereby agrees to indemnify and save the other Party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments (including, without limitation, reasonable attorneys' fees) arising in connection with the use of such other Party's property pursuant to this Agreement, unless caused by the negligence or willful

misconduct of such other Party. Each Party, to cover its obligations under this Section 10, shall obtain and carry at all times commercial general liability insurance providing not less than \$2,000,000.00 in coverage or such greater amount as is customary from time to time for comparable properties in the _____, _____, metropolitan area. All such insurance will be maintained with reputable, financially responsible insurance companies, and each Party, upon request of the other Party, shall furnish such other Party with a certificate of insurance or other evidence of the required insurance.

12. **Condemnation.** In the event the whole or any part of the areas encumbered by the Easements is taken by right of eminent domain or any similar authority of law (or in lieu of such condemnation or under threat of condemnation), the entire award for the value of the land and improvements so taken shall belong to the owner of that portion of the property so taken. No other Party shall claim any portion of such award by virtue of any interest created by this Agreement; provided, however, any such other Party may file a collateral claim with the condemning authority over and above the value of the land or improvements being so taken to the extent of any damage suffered by such Party resulting from the severance of the area so taken. In the event of a partial taking, the owner of the portion of the property so condemned shall, at its sole discretion, either restore the remaining portion of the area subject to the Easements owned by such Party as nearly as possible to the condition existing just prior to such condemnation or repair the area not taken and landscape any areas left unimproved in an attractive manner, without contribution from any Party of the area not so taken. In all events, the owner of the portion of the property so condemned shall complete the restoration or repair in a manner which will allow the remaining area subject to the Easements to continue to be used for its intended purposes.

13. **Easement Area Restoration.** In the event the whole or any part of the area encumbered by the Access Easements is damaged or destroyed, the owner of such property shall promptly repair, restore or rebuild the area encumbered by the Easements so damaged or destroyed so that the restored portions of the area shall (a) be in the condition existing immediately prior to such damage or destruction, and (b) comply with the applicable requirements of this Agreement.

In the event the whole or any part of the area encumbered by the Storm Water Easement is damaged or destroyed, Company 3 shall promptly repair, restore or rebuild the portion of the Company 3 Drainage System encumbered by the Easement, so damaged or destroyed, so that the restored portions of the Company 3 Drainage System shall (a) be in the condition existing immediately prior to such damage or destruction, and (b) comply with the applicable requirements of this Agreement. ABC Street Owner shall promptly repair, restore or rebuild the portion of the Drainage Connection so damaged or destroyed, so that the restored portions of the Drainage Connection shall (a) be in the condition existing immediately prior to such damage or destruction, and (b) comply with the applicable requirement of this Agreement.

All costs of repair, restoration, or rebuilding shall be shared in accordance with the parties' Proportionate Share (as to the Access Easements) or Drainage Proportionate Share (as to the Storm Water Easement).

14. **Default by a Party.** If either Party fails to comply with the provisions of this Agreement, the other Party may (but is not obligated to), after giving at least thirty (30) days' written notice to the defaulting Party, perform or cause to be performed such work or pay such sums as are necessary to comply with the terms of this Agreement. In such event, all sums reasonably expended and all costs and expenses reasonably incurred by the performing Party in connection with such work shall bear interest from the date expended or incurred (as the case may be) at the rate of eight percent (8%) per annum until paid or otherwise satisfied in full, and shall be paid within thirty (30) days to the performing Party by the defaulting Party on written demand. No breach of this Agreement shall entitle any Party to cancel, rescind, or otherwise terminate this Agreement (but such limitation shall not affect any other right

or remedy or limit any obligation that any Party may have under this Agreement by reason of such breach). Company 3 may at its sole option exercise all remedies contained in Section 9 relating to Hazardous Materials in addition to or in lieu of any remedies of this Section. Each Party shall act hereunder in a commercially reasonable manner to minimize interference with the activities of any other Party. Notwithstanding any provision in this Section 13 to the contrary, in no event shall any Party be liable to any other Party for indirect, special, punitive, or consequential damages, including, without limitation, lost profits.

15. Mortgagee Consent and Subordination; Mortgagee Protection; Association Consent and Subordination.

(a) Company 1 represents that there is no mortgagee that presently encumbers Company 1's property that is affected by the Easements.

(b) Company 2 represents that ___ and ___ are the only mortgagees that presently encumber Company 2's property that is affected by the Easements (collectively, the "Company 2 Lenders"). Company 2 shall provide Company 3 with an original consent and subordination, executed and acknowledged by each of the Company 2 Lenders, in the respective forms attached to this Agreement as Exhibit G (collectively the "Company 2 Consents and Agreements"), within sixty (60) days following the Effective Date. In the event Company 2 does not provide Company 3 the Company 2 Consents and Subordinations within such sixty (60) day period, Company 3 may terminate this Agreement.

(c) Company 3 represents that Manufacturers and Traders Trust Company is the only mortgagee that presently encumbers Company 3's property that is affected by the Easements ("Company 3 Lender"). Company 3 shall provide ABC Street Property with an original consent and subordination, executed and acknowledged by the Company 3 Lender, in the form attached to this Agreement as Exhibit H (the "Company 3 Consent and Subordination"), within sixty (60) days following the Effective Date. In the event Company 3 does not provide ABC Street Property with the Company 3 Consent and Subordination within such sixty (60) day period, ABC Street Owners (acting together) may terminate this Agreement. In such case, the Parties will cooperate to restore all matters and circumstances as they were prior to the Effective Date of this Agreement.

(d) Unless and until it enters into possession or acquires title pursuant to foreclosure of any arrangement or proceeding in lieu of foreclosure, any mortgagee under any mortgage affecting any part of the properties that are the subject of the Easements shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement. Any Party, on delivering to the other Party any notice, demand or other communication pursuant to the provisions of this Agreement, shall at the same time deliver (by means authorized in Section 27 below), copies of such notice to each mortgagee, if any, at the latest address provided to such Party by such mortgagee or the other Party. Although otherwise effective with respect to the Party receiving such notice, no notice delivered to any Party shall affect any mortgagee or such mortgagee's rights under this Section 14 unless a copy of such notice has been delivered to such mortgagee in accordance with the immediately preceding sentence. Each Party or their mortgagee shall have the right to remedy a default, or cause the same to be remedied, within the time allowed to the defaulting Party plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each mortgagee shall have the right to remedy such default if such mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) Company 2 and Company 1 jointly and severally represent that they are the sole owners of the ABC Street Property and the sole members of any association of unit owners, whether or not registered with the ____ Department of Commerce, having authority to govern the ____ Office Condominiums (the “Condominium Association”) created under that certain Declaration of Condominium for ____ Office Condominiums, an expandable condominium project (including association bylaws) recorded ____ as Entry No. ____ of the official records of the ____ County, ____ Recorder, as amended (the “Condominium Declaration”). Company 2 and Company 1, in their capacities as sole owners of ABC Street Property and sole members of any Condominium Association, hereby represent that they are duly authorized to execute this Agreement and subject the ABC Street Property to the benefits and burdens of the Easements. Company 1 and Company 2 agree that they and their successors and assigns will, personally, and in any future proceedings of any Condominium Association, affirm and comply with this Agreement (including any modifications of common areas managed by the Condominium Association), subordinate the liens of the Condominium Association to the terms of this Agreement, and not take actions contrary to this Agreement.

15. **Original Declaration of CC&Rs.** ABC Street Owner acknowledges that the Original Declaration of Covenants, Conditions and Restrictions was recorded on ____ as Entry No. ____ of the official records of the ____ County, ____ Recorder (the “CC&Rs”) against the ABC Street Property, although the Original Declaration was not executed by ABC Street Owner or its predecessor. ABC Street Owner further acknowledges that Company 3, acting as successor to the Original Declarant, may amend and restate the Original Declaration to remove the ABC Street Property from the provisions of the Original Declaration, as well as making other amendments to the Original Declaration. The Parties agree to proceed with such action, as well as to cooperate in the production and signing of future documents as reasonably may be necessary to effectuate such removal. ABC Street Owner, for itself and for its successors and assigns agrees to and does hereby release Company 3, _____, LLC, _____ Property Owners Association, Inc., _____, LLC, and _____, their affiliates, agents, employees, attorneys, representatives, shareholders, officers, directors, parents, predecessors, successors, subsidiaries, from all claims, demands, liability, damages, actions, causes of action, attorney’s fees, costs, expenses, or suits of whatsoever nature, direct or indirect, in law or in equity, known, unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted, arising from or relating to the Original Declaration or the recording of the Original Declaration against the ABC Street Property; Company 3 correspondingly releases ABC Street Owner.

16. **Attorneys’ Fees.** In the event any action is commenced by either Party against the other Party in connection with this Agreement, the prevailing Party shall be entitled to its costs and expenses, including reasonable attorneys’ fees, the amount of which shall be fixed by the court and made a part of any judgment rendered.

17. **Incorporation of Recitals and Exhibits.** The Recitals located at the beginning of this Agreement are incorporated herein by reference. The Exhibits attached to this Agreement are also hereby incorporated into this Agreement. In the event of any conflict between the legal descriptions in the Exhibits and the depictions of the same property, the depictions shall control.

18. **Amendments.** This Agreement shall be amended only by a written and recorded instrument signed by the Parties affected by the amendment.

19. **Termination.** In addition to the termination rights granted in Section 14 above, this Agreement may be terminated at any time by a written and recorded instrument executed by the Parties for such purpose.

20. **Entire Agreement.** This agreement sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement.

21. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of _____ without giving effect to its conflict of laws principles

22. **Authority.** The undersigned represent and warrant that each of them has been duly authorized by all necessary corporate or company action, as appropriate, to execute this Agreement for and on behalf of the respective Parties. The undersigned each further represents and warrants that this Agreement, when fully executed, shall constitute a legal, valid, and binding agreement for such Party, enforceable in accordance with its terms.

23. **Captions.** The captions to the sections of this Agreement are for convenience only and shall in no way affect the manner in which any provision thereof is construed.

24. **No Relationship.** The Parties hereto do not, by this Agreement nor by either Parties' acts, become principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

25. **No Waiver.** Failure of a Party hereto to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.

26. **No Dedication.** Nothing contained in this Agreement will be deemed to be a gift or a dedication of any portion of the Properties to the general public or for the use by or benefit of the general public for any public purpose whatsoever, it being the intention of the Parties that this Agreement will be strictly limited to and for the purpose expressed herein.

27. **Notices.** All notices made pursuant to this Agreement shall be in writing and shall be given by personal delivery to a responsible person, by deposit in the United States mail (certified mail, return receipt requested, postage prepaid), or by express delivery service, freight prepaid. Notices shall be delivered or addressed to the Parties at the following addresses, or at such other address as a Party may designate in writing:

Company 1: _____

Company 2: _____

Company 3: _____

With a copy to: _____

In addition, notices shall be given to the Parties' mortgagees, if any, at such addresses as have been or shall be provided by the Parties to each other from time to time. The Parties agree to provide each other with notice of changes of mortgagees and such mortgagees' contact information from time to time. The date when such notice is deemed to have been given, received and become effective shall be the date on which the notice is delivered, if notice is given by personal delivery, or the date of actual receipt, if the notice is sent through the United States mail or by express delivery service.

28. **Partial Invalidity.** If any term, provision, covenant or condition of this Agreement, or any application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, then all terms, provisions, covenants and conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

29. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement.

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

31. **Transfer of Property; Release On Transfer.** If any Party transfers ownership of the property encumbered by any of the Easements, the transferee automatically shall be deemed to have assumed and agreed to be bound personally by the covenants of such transferring Party contained in this Agreement and shall be deemed to be such Party for purposes of this Agreement. On and after the date a Party transfers (other than merely for purposes of security) or is otherwise divested of such Party's interest in any such property, such Party shall be relieved of all liabilities and obligations under this Agreement related to such property as of the date of recordation in the official records of the instrument effecting such transfer, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture. Notwithstanding any language to the contrary in this Agreement, so long as Company 3 remains an owner of any portion of the Company 3 Property, Company 3 shall retain responsibility for the obligations and rights of Company 3 set forth in this Agreement (including the rights to terminate this Agreement or bring an action for default by the other Party).

32. **No Merger.** The easements, covenants, restrictions and other provisions contained in this Agreement shall remain in full force and effect despite the fact that the properties that are encumbered by the Easements may be owned by the same person from time to time, and such easements, covenants, restrictions and other provisions will not be terminated by the doctrine of merger or otherwise, unless this Agreement is terminated in accordance with its terms.

33. **Covenants Run with the Land.** This Agreement shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of each Party holding an interest in the properties encumbered by the Easements and their respective successors and assigns, all of which persons may enforce any obligation created by this Agreement.

34. **Joint and Several Liability.** Company 2 and Company 1 shall be jointly and severally liable for the obligations of ABC Street Owner under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first written above.

ABC STREET OWNER:

COMPANY 1
a _____ limited liability company

By: _____
Its: _____

NOTARY BLOCK

COMPANY 2
a _____ limited liability company

By: _____
Its: _____

NOTARY BLOCK

COMPANY 3:

COMPANY 3
a _____ limited liability company

By: _____
Its: _____

NOTARY BLOCK

EXHIBIT A

LEGAL DESCRIPTION OF COMPANY 1 PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF COMPANY 2 PROPERTY

EXHIBIT C

LEGAL DESCRIPTION OF COMPANY 3 PROPERTY

EXHIBIT D

**PORTION OF COMPANY 3 BUSINESS PARK PLAT 'A'
SHOWING PROPERTIES**

(Attached)

EXHIBIT E

LEGAL DESCRIPTION OF THE ENTRANCES

(Attached)

EXHIBIT F

PLAN SHOWING DRAINAGE CONNECTION

(Attached)

EXHIBIT G

(FORMS OF) COMPANY 2 CONSENTS AND AGREEMENTS

(Attached)

**CONSENT, SUBORDINATION AND NONDISTURBANCE
COVENANT OF LIENHOLDER**

The undersigned beneficiary (“Lienholder”) under that certain Deed of Trust dated _____ and recorded _____, as Entry No. _____ in the Official Records of the _____ County, _____ Recorder (the “Deed of Trust”), that certain Assignment of Rents dated _____ and recorded _____ as Entry No. _____ in the Official Records of the _____ County, _____ Recorder (the “Assignment of Rents”), and that certain UCC Financing Statement recorded on _____ as Entry No. _____ of the Official Records and a continuation statement recorded _____ as Entry No. _____ of the Official Records of the _____ County, _____ Recorder (collectively, the “Fixture Filing”), which affect the property described in the attached Schedule 1, consents to all of the provisions contained in that certain Joint Access and Parking Easement Agreement dated _____ and recorded on _____ as Entry No. _____ in the Official Records of _____ County, _____ Recorder (the “Easement Agreement”), and covenants and agrees that the lien of the Deed of Trust, Assignment of Rents, and Fixture Filing shall be junior, subordinate, and subject to the Easement Agreement, and that any foreclosure of the Deed of Trust, Assignment of Rents, and Fixture Filing, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder, shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the Easement Agreement.

Dated this _____ day of _____, 20__.

By: _____

Its: _____

NOTARY BLOCK

SCHEDULE 1

LEGAL DESCRIPTION

**CONSENT, SUBORDINATION AND NONDISTURBANCE
COVENANT OF LIENHOLDER**

The undersigned beneficiary (“Lienholder”) under that certain Trust Deed Fixture Filing and Assignment of Rents dated _____ and recorded _____, as Entry No. _____ in the Official Records of the _____ County, _____ Recorder (the “Deed of Trust”), which affects the property described in the attached Schedule 1, consents to all of the provisions contained in that certain Joint Access and Parking Easement Agreement dated _____ and recorded on _____ as Entry No. _____ in the Official Records of _____ County, _____ Recorder (the “Easement Agreement”), and covenants and agrees that the lien of the Deed of Trust shall be junior, subordinate, and subject to the Easement Agreement, and that any foreclosure of the Deed of Trust, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the Easement Agreement.

Dated this _____ day of _____, 20__.

By: _____

Its: _____

NOTARY BLOCK

SCHEDULE 1

LEGAL DESCRIPTION

EXHIBIT H

(FORM OF) COMPANY 3 CONSENT AND SUBORDINATION

(Attached)

**CONSENT, SUBORDINATION AND NONDISTURBANCE
COVENANT OF LIENHOLDER**

The undersigned beneficiary (“Lienholder”) under that certain Deed of Trust, Assignment and Security Agreement dated _____, and recorded _____, as Entry No. _____ of the Official Records of _____ County, _____ Recorder (the “Deed of Trust”), which affects the property described in the attached Schedule 1, consents to all of the provisions contained in that certain Joint Access Easement Agreement dated _____, and recorded _____, as Entry No. _____ of the Official Records of _____ County, _____ Recorder (the “Easement Agreement”), and covenants and agrees that the lien of the Deed of Trust shall be junior, subordinate, and subject to the Easement Agreement, and that any foreclosure of the Deed of Trust, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the Easement Agreement.

Dated this _____ day of _____, 20__.

By: _____

Its: _____

NOTARY BLOCK

SCHEDULE 1
LEGAL DESCRIPTION

WHEN RECORDED, MAIL TO:

Tax Parcel No.: _____

GRANT OF EASEMENT

This Grant of Easement (the “Agreement”) is made as of the ___ day of _____, 20___, by _____, LLC, a _____ limited liability company (“Grantor”), whose address is _____, in favor of _____ City, a _____ municipal corporation, whose address is _____ (“City”), and _____, an agency of the State of _____ (“Agency”), whose address is _____ (collectively “Grantees”). Grantor and Grantees are sometimes individually referred to herein as a “Party” or collectively as the “Parties.”

RECITALS:

- A. Grantor is the owner of real property located in _____, _____, more particularly described on Exhibit A attached hereto (“Grantor’s Property”).
- B. Grantor has relocated a storm drainage channel (the “Prior Channel”) that previously conveyed Grantees’ storm water across Grantor’s Property.
- C. Grantor desires to grant to Grantees an easement for storm water drainage as more particularly described below, to replace any rights Grantees may have to the Prior Channel.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

AGREEMENT:

1. Grant of Easement. Grantor hereby grants to Grantees a nonexclusive easement (the “Easement”) across the real property described on Exhibit B for the purpose of replacing, repairing, maintaining, and operating a storm drainage channel (the “Drainage Channel”). The Easement is depicted by the cross-hatching on the map attached as Exhibit C.

2. Maintenance of Easement. Grantees shall be responsible for replacing, repairing, maintaining, and operating the portion of the Drainage Channel within any pipes, as well as having overall responsibility for operation of the Drainage Channel in connection with Grantees’ other drainage systems. As an accommodation to Grantees, Grantor shall replace, repair, and maintain the portion of the Drainage Channel that is not within the pipes, i.e. the open channel. All replacement, repair, maintenance and operations shall be done in accordance with applicable laws and regulations.

3. Easement in Gross; No Third Party Beneficiaries. The Easement shall be solely for the benefit of Grantees and may not be transferred or assigned by them. There shall be no third party beneficiaries of Grantees’ rights under this Agreement.

4. Release and Quitclaim of Rights Relating to Prior Channel. Grantees hereby release and quitclaim to Grantor any rights they may have to any easement, license, or other agreement or interest in real property related to the Prior Channel or to conveyance of Grantee's storm water across Grantor's Property, whether such rights arise from prescriptive use, adverse possession, prior agreements, or any other basis.

5. Use of Easement by Grantor. Grantor may make any use of the Easement which will not defeat, damage, or unreasonably interfere with the uses and purposes of the Easement as granted to Grantees. Grantor may not, however, obstruct the use of the Easement by Grantees.

5. Benefit and Burden. This Grant of Easement shall be for the benefit of Grantees, and shall be binding upon Grantor and upon Grantor's Property. The burdens of the Easement shall be binding upon Grantor and Grantor's successors, heirs, and assigns.

4. Duration and Remedies; Preservation of Rights. The Easement herewith granted shall remain in force and effect perpetually.

5. Several Rights and Liability. The rights and liability of the Grantees hereunder shall be joint and several.

6. Environmental Laws. Each Party agrees to indemnify and hold the other Parties harmless from and against any and all claims and liability that the indemnitee may suffer due to the spill, contamination, or release of any Hazardous Substance or Hazardous Material (as such terms may be defined in any applicable federal, state, or local law, rule, or regulation), which occur on or from the Grantor's Property or the Easement property into the environment, to the extent caused by the indemnitor's activities.

7. Signature Authority. The persons who have executed this Grant of Easement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

[Remainder of page intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, this Grant of Easement has been executed as of the date first above written.

GRANTOR

_____, **LLC**,
a _____ limited liability company

By: _____
Its: _____

NOTARY BLOCK

GRANTEE

_____,
a _____ municipality

By: _____
Its: _____

NOTARY BLOCK

_____,
a _____

By: _____
Its: _____

NOTARY BLOCK

EXHIBIT A

Grantor's Property

EXHIBIT B

Easement Parcel

EXHIBIT C

Map Depicting Easement

(See attached.)