

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
for**

**PORT 15 UTAH COMMERCIAL AND INDUSTRIAL PARK**

THIS DECLARATION is made this \_\_\_ day of \_\_\_\_\_, 2006, by Port 15 Utah, LLC (the "Declarant"), as authorized by the State of Utah, acting by and through the School and Institutional Trust Lands Administration (the "Trust Lands Administration") under that Operating Agreement of Port 15 Utah, LLC dated July 29, 2005.

**RECITALS**

WHEREAS, the Trust Lands Administration is the current owner of those lands located within the Port 15 Utah Commercial and Industrial Park near Cedar City, Iron County, Utah, described herein at Exhibit A (the "Property"); and

WHEREAS, the Trust Lands Administration has authorized Declarant to prepare, record and enforce this Declaration as part of the development, administration and use of the Property; and

WHEREAS, this Declaration is made to establish a general plan and standards for the consistent quality of development, administration and use of the Property and to insure adherence thereto so as to avoid improper development, administration and use of the Property; and

WHEREAS, the Property and all present and future designated parcels and lots therein (the "Lots") shall, at all times, be subject to this Declaration, as amended; and

**DECLARATION**

NOW THEREFORE, Declarant hereby declares that the Property is now held, and shall be held, transferred, sold, leased, conveyed, improved and occupied or otherwise dealt with subject to the Covenants, Conditions and Restrictions (the "CC&Rs) set forth herein and as amended, each and all of which are for and shall inure to the benefit of and shall pass and run with each and every Lot and apply to and bind the heirs, grantees, assigns and successors in interest of each and every Lot owner (the "Owner(s)"), lessor, lessee or interest holder of any sort.

**ARTICLE 1. OPERATION, INTENT AND PURPOSE**

A. Each Owner covenants and agrees to use the Property and Lots only in accordance with these CC&Rs and to refrain from using the Property and Lots in any way inconsistent with

or prohibited by these CC&Rs.

B. It is the intent of Declarant and the purpose of these CC&Rs to create mutual and equitable servitudes upon the Property and Lots in favor of all other Lots located therein, creating reciprocal rights and obligations between the respective Owners, and creating privity of contract and estate between Owners.

C. It is the intent of Declarant and the purpose of these CC&Rs to allow general, light industrial activities, manufacturing, warehousing, general business and marketing activities to be carried out in designated areas within building(s) on the Property, which do not contribute excessive noise, dust, smoke, gases, fumes, odors, or vibration to the surrounding environment and do not contain a high hazard potential due to the nature of the products, material or processes involved. Heavy industrial uses are not allowed.

D. It is the intent of Declarant and the purpose of these CC&Rs to control the occupant and building density on the Property, to expressly prohibit certain uses of the Property, and to protect the character of the Property.

E. It is the intent of Declarant and the purpose of these CC&Rs to create a high-quality successful business park environment and community for companies that will be sustainable through maintenance, landscaping and other attractive qualities that allows businesses, residents, clientele and other groups to work in a harmonious manner.

## **ARTICLE 2. PROPERTY MANAGEMENT - PORT AUTHORITY**

A. Port 15 Utah Port Authority. The Property shall be maintained and managed by the Port 15 Utah Port Authority (the "Port Authority" or "Management"). The Port Authority shall be a separate entity operating under the direction of the Declarant and later the Port 15 Utah Owners Association (the "Association"). The Port Authority is created as a separate entity to serve in the best interests of the Declarant, the Owners and the Association by diligently exercising its duties and powers as described below.

B. Duties and Powers. With respect to the Property, the Port Authority shall maintain and administer the Common Areas (including any area or system adjacent to the Property for which the Port Authority has responsibility); administer architectural control matters; enforce the covenants, conditions, easements, reservations and restrictions set forth in this Declaration; levy and collect assessments; pay common expenses; procure and maintain requisite policies of insurance; secure necessary professional services; bring and respond to legal action; and, in general, manage the Property in a manner which will protect and enhance the value, desirability and attractiveness of the Property and the quality of the business environment therein.

C. Managing Entity. All direction and control over the Port Authority shall be vested in the Declarant until at least ninety (90%) or more of the acreage within the Property available for sale has been conveyed by patent from the Trust Lands Administration and the Association

has been formed under the laws of the State of Utah, at which time the Association shall assume the direction and control over the Port Authority. Prior to said assumption, Declarant may, in its own discretion, cede direction and control over the Port Authority to the Association.

D. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (deed, patent, etc.) for his Lot and shall file a copy of such conveyance document with the Port Authority, who shall maintain a record of ownership of the Lots.

### **ARTICLE 3. PORT 15 UTAH OWNERS ASSOCIATION**

A. Organization. The Association shall organize as a Utah non-profit corporation and shall adopt Articles of Incorporation and Bylaws consistent with this Declaration, to the extent reasonably possible.

B. Membership. Every Owner shall be a member of the Association and shall remain a member thereof until such time as his ownership of his Lot ceases for any reason, at which time his membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

C. Transfer. An Owner's membership in the Association shall not be transferred or alienated in any way except upon the conveyance or encumbrance of such Owner's Lot and then only to the grantee or mortgagee of such Lot.

D. Voting Rights. Each owner shall have one vote per acre owned. Fractional acres account for equal fractional votes.

E. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the votes relating to such Lot shall be exercised as a singular voting unit as such Owners may determine among themselves. In no event shall the votes with respect to any Lot be cast fractionally or separately by different Owners. Votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

F. Association Board of Directors and Manager. The Association members may appoint or elect a manger and/or Board of Directors to exercise the powers and carry out the duties of the Association.

G. Association Rules. The Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, repeal and enforce rules and regulations governing all matters concerning the use and enjoyment of the Property.

H. Limitation of Liability. No manager or member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the manager.

#### **ARTICLE 4. ARCHITECTURAL CONTROL COMMITTEE**

A. Architectural Control Committee. The Port Authority may appoint an Architectural Control Committee (the "ACC"), the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and are compliant with this Declaration. The ACC need not be composed of only Declarant and Owners. If the ACC is not appointed, the Port Authority itself shall perform the duties of the ACC.

B. Submission to ACC. No landscaping, building, including accessory or addition may be constructed, and no significant alteration or refurbishing of the exterior of any building shall be performed, unless complete plans and specifications thereof have first been submitted to and approved by the ACC.

C. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to this Declaration and harmonize with existing surroundings and structures.

D. Construction. Once begun, any improvements, construction landscaping, or alterations approved by the ACC shall be diligently prosecuted to completion.

E. Liability for Damages. The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article.

F. Exception for Declarant. The provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant. However, Declarant hereby covenants in favor of each Owner that the improvements, construction, landscaping, or alterations it carries out will be compatible with this Declaration, to the extent reasonably possible.

#### **ARTICLE 5. PRE-CONSTRUCTION APPROVAL OF ACC**

A. Before commencing the construction or significant alteration of all buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to any Lot, the Owner shall first submit the following materials to the ACC for its approval:

1. Site plans, including setback lines, roads, parking areas, loading and

maneuvering areas, external lighting, and utilities and utility easements.

2. Location and detail of signs;
3. Samples of the actual materials proposed for all external surfaces for any and all structures;
4. A complete landscape plan detailing both soft and hard structures;
5. An accurate architect's or artist's depiction or scale model of the project;
6. Appropriate specifications;
7. All building, fencing, signage and structural colors; and
8. All placement and elevation of required berms.

The ACC may waive the submission of any of the above-listed materials under appropriate circumstances.

B. ACC Right of Refusal. The ACC shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed structure, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other planned structure, on the outlook from adjacent or neighboring property.

C. ACC Development Guidelines. The ACC may adopt development guidelines as it deems necessary to inform owners of the standards that will be applied in approving or disapproving proposed uses and constructions. Such guidelines shall in no event be less restrictive than the CC&Rs stated herein, and they may be modified in the same manner as provided for modification of this Declaration. The ACC will be guided by this Declaration, the goal of developing and maintaining a high-quality and visually appealing light industrial/business park, the ordinances of Cedar City, Utah, including the Uniform Building Code as adopted, and other applicable rules and regulations.

D. ACC Approval. In the event the ACC, or its designated representative, shall fail to approve or disapprove building plans, specifications, or site plans within sixty (60) days after they have been fully submitted to the ACC, approval shall be deemed given unless notice is given by the ACC that circumstances reasonably warrant an extension of time, in which case the ACC shall make a decision within a reasonable time. No decision shall be unreasonably withheld. ACC approval shall not be construed in any way to be a warranty or representation that the building plans meet applicable building codes and regulations and the ACC shall not be liable for any impacts or damages in the event such buildings or plans fail to meet all applicable local, state, and federal codes and regulations.

## **ARTICLE 6. CONSENT TO PLAT**

A. Plat. Declarant shall prepare and record one or more plats designating ownership of the various Lots. Upon request of Declarant, Owners shall give written consent to the preparation, contents and recording of said plat(s) within thirty (30) days of receiving said request.

B. Condominiums. If permitted by the subdivision ordinance and other applicable laws of Cedar City or Iron County and if approved by the ACC, an Owner may develop commercial condominium units on part or all of the Lot. Such further development may occur either before or after the recording of a plat on that portion of the Property of which the Lot is a part. In either case, the Lot so developed with condominium units shall continue to be subject to all of the terms and conditions of this Declaration. In addition, the Lot so developed shall be deemed to be, and shall remain, one Lot for purposes of these Covenants. Accordingly, all rights and obligations hereunder relating to that Lot may only be exercised jointly and severally by the individual real property interest holders within that Lot.

## **ARTICLE 7. LOTS AND STRUCTURES**

A. Ownership. Each Lot shall be owned in fee simple by the Owner.

B. Structures. Structures may be constructed as permitted herein, subject to approval of the ACC, and in accordance with and subject to the ordinances of Cedar City, Iron County including all applicable rules and regulations.

C. Building Appearance.

1. Colors. No loud colors of any kind will be allowed on any structure within the Property. All buildings will use earth tone colors on all surfaces. All colors will be subject to ACC approval before construction begins.

2. Materials. Building exterior materials and paints shall be appropriate for the Property, of high-quality, and harmonize with the surroundings and other structures. All materials will be subject to ACC approval before construction begins.

3. Design and Construction. Building design and construction shall be appropriate for the Property, of high-quality, and harmonize with the surroundings and other structures. All design and construction will be subject to ACC approval before construction begins.

## **ARTICLE 8. PERMITTED USES**

The Property is restricted to select commercial, light industrial, manufacturing, warehousing, and general business uses that are compatible with a light industrial/business park

development. The Property is also restricted to aesthetically attractive and harmonious structures and improvements, including landscaping, as approved by the ACC.

## **ARTICLE 9. PROHIBITED USES**

No part of the Property shall be used for any purpose or business that is prohibited by the zoning applicable to the Property at any time. No portion of any parcel or lot may be occupied for any use which is in violation of any applicable ordinances, laws or regulations of any government entity having jurisdiction over the use of all or any part of the Property or for any use which is inconsistent with the provisions of this Declaration, ACC design guidelines (if any), or the local zoning determinations. Further, the following uses or any uses substantially similar to any of the following are expressly prohibited in the Property:

- A. Residential purposes, except for one dwelling no larger than 12' x 16' for the use of a watchmen or other employees whose residence on the Property conforms an integral part of the operation as approved by the ACC and the Cedar City ordinances;
- B. The manufacture, storage, distribution or sale of explosives;
- C. The salvage, wrecking or stripping of vehicles, or the storage in bulk of junk, second hand or unsightly materials of any type;
- D. Stock and feed yards or anything that houses or processes live animals;
- E. Food processing which involves the slaughter of animals or the use of animal carcasses;
- F. Recreational activities including courses for vehicular racing, the use of specialized recreational equipment, motorcycle or other race tracks, and spectator sports;
- G. Wood treating facilities or asphalt production;
- H. Dumping, disposal, incineration, or reduction of garbage, sewage, or any hazardous substances or refuse;
- I. Mining, drilling for or removing oil, gas or other hydrocarbon substances;
- J. Petroleum refinement or any of its products;
- K. Jails, correctional facilities, work release facilities, alternative programs for youth, halfway houses, or any similar type of operation of any kind;
- L. Bars, taverns, pool halls, billiard rooms, game parlors, video arcades, massage parlors, dance halls, adult bookstores, nude or partially nude entertainment establishments or any

other adult entertainment establishments of any kind;

M. Cemeteries or mortuaries;

N. Any process, treatment, or storage of any material that would create an offensive smell or odor;

O. Any process, treatment or manufacturing that produces a visible discharge to the environment like smoke stacks, rotting materials, etc., excluding steam or vapor created in the normal course of business operation;

P. No building or structure that is taller than forty (40) feet in height; and

Q. Any other use prohibited by the Port Authority or ACC.

## **ARTICLE 10. PERFORMANCE REQUIREMENTS**

A. General Requirements. The owner of any Lot shall keep the premises, buildings, improvements and appurtenances in a safe, clean and wholesome condition at all times. In addition, the owner must comply in all respects with all government, safety, health, fire and police requirements and regulations.

B. Specific Requirements. All uses shall comply with the limitations set forth below:

1. Vibration. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at the Lot line or at any point beyond the Lot line.

2. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. In no event shall the sound-pressure level of noise radiated continuously from a facility at nighttime exceed at the Lot line an octave band of frequency of those recommended values set out in the American Standard Specification for an Octave Band Filter Set for the Analysis of Noise and Other Sound, Z24.10-1953, of the American Standards Association.

3. Air Pollution. Emissions discharged into the atmosphere shall comply with the standards of the Clean Air Act, 42 U.S.C.A. 7401, et seq, state statutes and regulations and local ordinances, as amended.

4. Odors. Creation of odors, gases, fumes, vapors, acids or other substances of such intensity and character as to be detrimental to the health and welfare of the public or any person, property or vegetation or which interferes unreasonably with the comfort of the public or any person is prohibited.

5. Electromagnetic Radiation. Planned or intentional sources of electromagnetic radiation for any purpose which do not comply with the then current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation are prohibited, unless special circumstances exist which are reviewed by the ACC and upon recommendation from the ACC, the requirements of such regulations may be modified. Any source of electromagnetic interference, the radiation or transmission from which exceeds reasonable standards, based on standard field strength measuring techniques is prohibited.

6. Radioactive Materials. The handling of significant quantities of radioactive materials is prohibited.

7. Liquid or Solid Waste. There shall be no discharge at any point into any public or private sewage disposal system or stream or into the ground, of any liquid or solid materials except in accordance with the regulations and standards established by Cedar City, Iron County, Utah ordinances, and other applicable state and federal laws.

8. Water Supply. No individual water supply system shall be used or permitted on any Lot or group of Lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Cedar City Corporation Water Department and State Health Department. Approval of such system as installed shall be obtained from such authorities.

## **ARTICLE 11. YARDS AND SETBACKS**

A. Minimum Yard Spaces and Setbacks. Minimum yard spaces and set back distances are:

1. Front Setback - Fifty feet (50') from back of curb.
2. Side and Rear Setback - Twenty five feet (25') from property line.

B. Setback Areas. Setback areas shall be landscaped in accordance with Article 14. Setback areas may contain paved walks, paved driveways and parking areas. Fences are not allowed in the front setback area.

C. Allowances in Front Setback Areas. The only items that are allowed in the front setback area are landscaping, monument signs, parking areas for employees and customers (no large trucks) and architectural elements that have been approved by the ACC.

## **ARTICLE 12. EXTERNAL BUILDING STRUCTURES**

All significantly exposed and noticeable projections outside of any building, including mechanical and electrical equipment, cooling towers, transformers, ducts, vents, etc., including communications equipment, shall, to the extent reasonably possible, be screened from public

view by appropriate and approved enclosures.

### **ARTICLE 13. LOADING AND UNLOADING DOCKS, AND STORAGE AREAS**

No loading dock shall be constructed facing on any public street unless such loading dock and every part thereof is at least seventy five feet (75') inside the right-of-way line of the street on which such loading dock fronts. Loading, unloading and storage areas shall be paved to provide dust-free, all weather surfaces.

### **ARTICLE 14. LANDSCAPING - 5300 WEST**

A. Landscaping Responsibility. Landscape installation adjacent to and near 5300 West will be in accordance with this Article and shall be the responsibility of the Declarant. Maintenance of said area will be the responsibility of Port 15 Authority.

B. 5300 West is a major transportation corridor for Cedar City and is set apart with landscaping restrictions specific to this area and contained in this Article;

C. Property Entrance. Declarant will install entryway landscaping along the main entrance into the Property from 5300 West. Maintenance of the Property entrance shall be the responsibility of the Port Authority.

D. Site walls. Site walls will be placed on the East and West sides of 5300 West as designated in Exhibit "B." These Site Walls shall conform to the following criteria:

1. Site walls will be placed along primary roads with set-backs for line of sight at intersections.
2. Site wall placement will alternate sides of property line.
3. Site walls will be constructed from an 8" x 8" x 16" tan one side split-face concrete block equal to Sunroc CMU. The walls on the road side of the property line will be in 20' lengths, 7'4" in height, which will alternate between stone veneer and stucco finish. The walls on the property owner's side of the property line will be in 30' lengths, with two steps and will be split faced concrete block.
4. Site walls will be engineered for footing size and rebar reinforcement to meet Cedar City building standards and codes.
5. Site walls will have step in height from 6' to 7' 4".
6. Stucco will be machine applied.
7. Stone veneer will be Culture Stone by Owens Corning; style: "Aspen

Country” Ledge Stone #CSV 20008.

8. Stucco colors will be from Senergy manufacturer. Colors are to alternate using all of the five colors: “Crème Brule” #3029, “Ash Brown” #620, “Custard” #440, “Seamist” #775, and “Frappe” #3063.

9. Separation between straddled walls will be connected by 8" CMU.

E. Landscaping in Divider Areas and Road Side Areas. The landscaping materials that are approved for the divider areas are as follows:

1. Ground Cover will be Painted Desert Rock or an equivalent match. Rock is supplied by Red Cedar Rock Landscape Supply, 1229 N. Main, Cedar City, Utah.

2. Trees will be Honey Locust “Shade Master” and at least 3" caliper and pruned to protect sight lines.

3. Other shrubs and plants will be selected based on the following criteria..

- a. Ability to withstand prolonged cold winters and snow accumulation;
- b. Drought tolerance;
- c. Elevation, amplitude, soil, and water requirement considerations;
- d. Soil stabilization characteristics;
- e. Short establishment period and accelerated growth;
- f. Compatibility with native vegetation; and
- g. Appearance and size.

F. Landscape plans must be pre-approved by the ACC.

## **ARTICLE 15. LANDSCAPING - PROJECT INTERIOR**

A. Landscaping Responsibility. Landscape installation and maintenance in accordance with this Article shall be the responsibility of the Owner.

B. External Landscaping. All Lot areas outside fenced areas which border public areas, including roads, shall be landscaped.

C. Landscape Ratio. Not less than fifteen percent (15%) of the total Lot area, including setback areas, shall be landscaped.

D. Landscaping Defined. Landscaping means decorative vegetation, including but not limited to, grass, shrubs, bushes, trees, floral, or other associated or comparable ground surface cover. Landscaping shall also mean plazas, pools, water features and walkways.

E. Landscape Maintenance. Landscaped areas, including parking area landscaping, shall be consistently maintained, including but not limited to, regular watering, periodic trimming and weekly mowing, to ensure that all areas are kept safe, clean, tidy and attractive at all times.

F. Plants. Plant species shall be selected based on the following characteristics:

1. Ability to withstand prolonged cold winters and snow accumulation;
2. Drought tolerance;
3. Elevation, amplitude, soil, and water requirement considerations;
4. Soil stabilization characteristics;
5. Short establishment period and accelerated growth;
6. Compatibility with native vegetation; and
7. Appearance and size.

G. Planting Beds/Pots. Shrubs and planting beds shall be mulched with wood chips. Planting beds shall be separated from turf areas with a mowing strip/box constructed of concrete. Drought tolerant/resistant plants should be utilized to the fullest extent possible.

H. Trees. There shall be a minimum of 1 pine tree for every 750 square feet of landscaped area. Approximately eighty percent (80%) of all trees on any Lot should be evergreens or conifers. Evergreen trees shall stand a minimum of approximately eight feet (8') high. Deciduous trees shall have a caliper of approximately 2.5 inches in diameter and stand a minimum of approximately twelve feet (12'). Trees must be double staked the first year after planting.

I. Streetscape and Parking Areas. Streetscape and parking area trees shall provide shading, visual enhancement, and continuity for the streetscape. Trees shall be planted in an irregular, natural grouping. Placement shall include consideration for vehicle and pedestrian line of sight, entrance and exit curb cuts, streetlight and traffic control devices, and other site-specific conditions. Berms shall be used in streetscape and parking areas.

J. Set Back Areas. Front setback areas shall include landscaping with an effective combination of turf, integrated earth mounding (berms), trees, ground cover, planter boxes, and/or shrubbery. All unfinished areas not utilized for parking shall be landscaped with similar methods.

K. Snow. Landscaping shall be designed so as to accommodate on-Lot snow removal and storage.

L. Landscape plans must be pre-approved by the ACC.

## **ARTICLE 16. PARKING AREAS**

A. Maintenance. Parking areas shall be maintained in good condition, kept clear, unobstructed, and in a usable condition at all times. The Owner shall be responsible for maintenance of on-Lot parking areas.

B. Off-street Parking Access and Quantity. The Owner shall provide adequate off-street parking to accommodate all parking needs for the Lot. Owners shall not permit their employees or tenants to regularly park on public streets within the Property. Vehicular access to a parking area shall be permitted only by paved access roadways.

C. Parking Area Construction. All parking areas shall be covered with a hard, dust-free, paved surface, appropriately striped or otherwise marked. Parking areas shall be graded for proper drainage with surface water diverted in such a way as to keep the parking area free of accumulated water or ice. Adequate control curbs shall be installed to control drainage and direct vehicle movement. Parking lot drainage shall be controlled on site and channeled to storm drains or gutters as approved by Cedar City. Access grades shall be in accordance with and approved by the City Engineer.

D. Parking Stalls. Parking should meet the Cedar City ordinance set for each building type. Each parking stall shall have a minimum space dimension requirement of 9' x 20'. Drive aisle minimum width shall be twenty five feet (25'). Parking stalls shall be square in their layout. Head to head parking is permissible.

E. Snow. Where parking will be affected by weather conditions and snow removal is of concern, adequate snow storage areas shall be provided adjacent to each parking area in a usable, readily accessible location.

## **ARTICLE 17. STORM WATER RETENTION**

Where required by the City, short term storm water retention implements shall be contained within the configuration of parking areas, the configuration of landscaping, or a combination of both. Dedicated retention basins will not be permitted within any property.

## **ARTICLE 18. DRIVEWAYS AND ACCESS WAYS**

Driveways and parking access shall conform to Cedar City ordinances and be arranged so that entering and departing drivers have a clear view of approaching pedestrians, vehicles, crosswalks, and entering traffic lanes.

## **ARTICLE 19. BARRIERS/FENCING**

Perimeter fencing for all Lots shall be installed by the Owner and meet the following criteria:

- A. Walls will be double split face CMU 8"x 8"x 16" block to be "Sunroc Tan";
- B. Walls will be installed on all sides and rear of property;
- C. A wall from each front corner of owner's building is to be installed and connected to the side property line wall to enclose owner's yard. Gates can be installed for access, but gate design must be approved by ACC;
- D. Walls will have vertical expansion joints every 40' lineal;
- E. Top of walls to have CMU cap;
- F. Wall height will be a minimum of 6' at the highest grade elevation of either owner's property or the adjoining property;
- G. Footings and rebar reinforcement will be engineered by Owner;
- H. Design and engineered wall to be submitted to the Port Authority for review and approval prior to construction; and
- I. By agreement, property owner who first installs wall will be reimbursed by new owner that purchases adjoining property for one-half (1/2) the cost of wall bordering adjoining properties. Agreement must be signed by Port Authority before construction begins.

## **ARTICLE 20. TRASH REMOVAL AND RECEPTACLES**

A. Garbage and Refuse Disposal. The Owner shall remove at its own expense rubbish, trash, garbage or waste of any character which may accumulate on its Lot. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or waste of any character. Such rubbish, trash, garbage or other waste of any character shall not be kept except in enclosed sanitary receptacles. No rubbish, trash, garbage or waste of any character shall be burned on any Lot.

B. Waste Receptacle Location and Screening. All trashcans, storage bins or other receptacles must be fully enclosed and screened by waste receptacle structures. Waste receptacle structures should be constructed of appropriate materials compatible with the overall architecture of the associated structure and approved by the ACC. No waste receptacle structure will be allowed in front of a building. All waste receptacle structures are to be located in a position that is the least visible from public areas, generally to the back or side of buildings. Trees and shrubs shall be provided on the street side of any architectural material or fencing forming part of the screen. Trees and shrubs shall cover a minimum of fifty percent (50%) of the fence or architectural material in order to soften the screen.

C. Waste Area Maintenance. It is the Owners responsibility to keep waste areas clean and all trash inside bins at all times. All equipment for the storage or disposal of trash, garbage, rubbish or waste of character shall be kept in a clean and sanitary condition.

## **ARTICLE 21. OUTSIDE MATERIAL STORAGE**

Outside storage of material may be permitted only where such storage is appropriately screened from all approaches, stored in a safe manner, adherence to any applicable codes and regulations, and does not present a hazard or interfere in any manner with the regular operations of the Property including regular traffic flow, daily operations and neighboring industries. Outside material storage facilities are subject to approval by the ACC.

## **ARTICLE 22. FLEET STORAGE**

Vehicles and equipment must be stored/parked in a designated area and within the fenced area designed specifically for this use and kept free of debris. Vehicles or equipment in the process of repair and/or maintenance cannot be stored in the parking area, but must be removed to a proper repair/maintenance facility. Vehicle maintenance is not allowed in the parking areas.

## **ARTICLE 23. MAINTENANCE REQUIREMENT**

A. Upkeep. The Owner is responsible for and shall at all times keep the premises, buildings, improvements, appurtenances and landscaping in a safe, clean and attractive condition and comply in all respects with all applicable federal and state government zoning and building statues, ordinances, health and fire codes and police requirements and regulations.

B. Exteriors. Exterior walls and facings which have been painted or otherwise chemically treated shall not be allowed to become cracked, chipped, faded, or in any way seriously deteriorated.

C. Fencing and Screens. Fencing and other architectural screens shall be kept in good repair and maintained in a clean and attractive manner at all times.

D. Removal and Replacement. Should any improvement or landscaping be razed,

removed, damaged, or destroyed, within a reasonable amount of time thereafter, the Owner of the Lot on which such improvement or landscaping is or was located either shall cause such improvement to be restored pursuant to the applicable requirements of this Declaration or shall cause all debris to be removed and the site of such improvement or landscaping to be left in a level, clean and attractive condition pending the prompt construction or installation of replacement landscaping or improvements.

E. Right of Entrance, Repair and Costs. In the event an Owner fails to comply with any or all of the aforesaid requirements or any of the requirements of this Declaration, the Port Authority shall have the right, privilege and license to enter upon the premises and make any and all corrections and/or improvements that may be necessary to meet the standards of this Declaration and charge to and collect from said Owner the reasonable costs of making such corrections and/or improvements plus an administrative fee of fifteen percent (15%). Such cost and fee shall be treated as an Operating Expense.

## **ARTICLE 24. SIGNAGE**

A. Design and Purpose. Signage throughout the Property is intended primarily for directional purposes and not advertising. The emphasis is on minimizing the amount of signage to avoid visual clutter. No sign shall be erected or maintained on the Property except in conformity with the provisions of Cedar City, Iron County ordinances. Signage/graphics systems, both temporary and permanent are to be compatible with the desired character and quality of the Property as a whole. Signs are to be of simple, clean design and constructed of durable materials, which are consistent and compatible with the project architecture. The emphasis will be qualitative as well as quantitative and adherence to the minimum standards herein will not necessarily assure approval. Proposed plans for signage, temporary and permanent, including details of design, materials, lettering, location, mounting, size, color and lighting are to be submitted to the ACC for approval.

B. Requirements. In addition to the requirements of said ordinances and in modifications thereof, the following shall be required:

1. Temporary Signage:

a. All temporary signage will be of a professional and tasteful character and will be subject to ACC review.

b. Project Announcement. Where the purpose is to announce a forthcoming project or project which is under construction, signage is limited to one sign per site/lot, 8' x 8' single or double faced, 12' from grade to the top of the sign. The information contained herein is limited to the name of the project (6" maximum height letters), rendering 4' x 4' maximum, name and logo of developer, architect, lender, contractors and project type and date of availability/opening (all in 4" maximum height letters). The project address is required. The letter spacing,

layout and other details are subject to ACC approval. The sign must be removed no later than date of receipt of certificate of occupancy.

c. Directional (during construction phase). Where the purpose is to identify construction entrance and routing traffic through the site, the sign is limited to a 2' x 2' single or double faced sign, with maximum height of 4' from grade to the top of the sign unless mounted on construction fencing, in which case the sign cannot exceed the height of the fence. The information on the sign is limited to directions only in 3" maximum height lettering. The sign may be installed at the commencement of construction and removed when no longer necessary or upon receipt of certificate of occupancy.

d. Leasing/For Sale Sign. Where the purpose is to provide leasing or sale information, one sign per street front per site/lot. The sign size is limited to 4' x 8' single or double faced with the maximum height 6' from grade to top of sign. The information included is limited to the name and logo of leasing agent (logo maximum 18" x 18") with a brief description such as "space available", "site available" with 6" maximum height lettering. The sign may be installed at commencement of construction and removed when no longer necessary or upon receipt of certificate of occupancy.

## 2. Permanent Signage:

a. Design and Content. All copy must be placed at least six inches (6") from the edge of the sign. Each sign must show the name and address of the building in an approved typeface and size. Animated, flashing or intermittent illumination signage is prohibited. Signs shall be designed as part of the architectural design of the building so as to add to the aesthetic appearance of the building.

b. Building Signs. A single sign shall be allowed on the front of each facility, and of a size not to exceed one square foot (1 sq. ft.) for each horizontal linear foot of building wall facing the street on which the sign faces, limited to the name of the business/building and/or address for identification purposes.

c. Building Complex Signs. Where there are 3 or more buildings with contiguous sites that are master planned or designed to be architecturally compatible, one complex sign and one building sign for each building is allowed. The purpose of the signage is to identify the complex and the buildings within it, thus the information is restricted to the complex name and address on the complex sign and the building or major tenant and address on the building sign. A single sign shall be allowed on the front of each building, and of a size not to exceed one square foot for each horizontal linear foot of building wall facing the street on which the sign faces.

d. Monument Signs. Freestanding, monument style with concealed supports (no poles) are allowed, either single or double faced, limited to the building or major tenant name and address. The allowable dimensions are 12' long by 4' high with an additional base height of 18". Monument signs are limited to one sign per building/building complex and shall be designed as part of the architectural design of the building so as to add to the aesthetic appearance of the building.

e. Directional/Informational/Regulatory. Directional, informational or regulatory signage will be approved on a case by case basis through the ACC based upon what is required and in conformance with local governmental codes. Dimensions for such signage will be limited to 6 square feet and 5' height maximum with poles required to be uniform in color, height and type.

f. Incidental Signs. Any incidental sign or sign used for secondary purposes such as "No Parking", "Entrance", "Load Only", will be professionally designed, uniform in color and design, aesthetically fit with the building exterior and be restricted to 1' X 2' in size.

g. Hours of Operation Signs. Signs must be professionally printed on front doors or windows. Plastic, paper, or other similar quality medium is not permitted.

C. Declarant Signage. These sign restrictions shall not apply to the commercial activities, signs and billboards of the Declarant while the Property is under construction and Declarant is marketing Lots.

## **ARTICLE 25. LIGHTING**

A. Design and Purpose. To create an attractive and uniform look throughout the Property, exterior street, sidewalk and parking lot lighting has been determined and all Owners shall be held to these standards.

B. Required Lighting. The specific name and model number of the lighting to be employed by the Owners are as follows:

### **Illuminator Brand Series**

1. Single Side Parking Lot: Model GM 920 P HPS, (single head) Cast Aluminum Head Fixture, Steel Pole, Powder Coated

2. Head to Head Front Parking Lot: Model GM 921 P HPS, (double head) Cast Aluminum Head Fixture, Steel Pole, Powder Coated for use

C. Pole Color. The lighting poles shall be Forest Green.

## **ARTICLE 26. UTILITY EASEMENTS**

A. Designation. Declarant shall designate all necessary easements and rights-of-way required to bring public utility service to each of the Lots, including, but not limited to rail, electric, data, telephone, gas, water and sewer service. Location of easements may be changed in the event a different location is found to be to the advantage of Declarant.

B. Easement Rights. In the event an Owner desires to exercise the easement rights provided for in this section, such Owner shall first obtain the written consent of the ACC and shall take all action necessary to ensure a minimum amount of damage and interference with such portion of the Property and other Lots and users. As part of the approval of the exercise of any utility easement rights, the ACC may require 1) that all such facilities be located outside of any portion of the Property improved with asphalt or concrete, and 2) all such facilities be placed in a location that does not hinder the ability to develop the Lots to be burdened by such easement.

C. Costs. Such Owner shall pay the entire costs involved in the exercise of its easement rights, including all costs to fully restore or cause to be fully restored to substantially their previous condition any improvements on the subject property which may be damaged as a result of such exercise. The ACC shall have the right to disapprove of any installation if in the ACC's judgment such installation, among other things, would duplicate any existing services, could be provided by other utility providers or by existing common utilities established within the common utilities easement.

## **ARTICLE 27. DEDICATION OF COMMON ROADWAYS AND UTILITY FACILITIES**

The Declarant shall have the right, in its sole discretion, from time to time, and without the need for consent or approval by any individual Owner, mortgagee or other party, to dedicate or cause to be dedicated for public use all or any portion of the common roadways and any common utility facilities and related easements. In the event any such dedication takes place, the rights-of-way and easements and all maintenance, insurance, and other obligations created by this Declaration shall automatically terminate with respect to the portion of the common roadways or common utility facilities and related easements so dedicated. Each Owner or mortgagee shall fully cooperate with the Declarant in accomplishing such dedication, including the execution of such documents, maps or plats as may be necessary to formally dedicate such portion or portions of the common roadways or common utility facilities and related easements.

## **ARTICLE 28. TIME LIMITATION ON CONSTRUCTION**

Each Owner, except the Declarant, shall be required to obtain a building permit and begin construction of an ACC approved building within one (1) year from the date of purchase of a Lot. The ACC has the right to extend this one-year period on terms agreeable to it. If owner does not

build under these conditions Declarant's agent can purchase the land back at the original purchase price minus \$25,000 and any unpaid taxes.

#### **ARTICLE 29. CONSTRUCTIVE NOTICE AND ACCEPTANCE**

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

#### **ARTICLE 30. ADDITIONAL PROPERTY**

Additional property may be subjected to these CC&Rs by the Declarant. Declarant shall indicate its intent to have such property bound by these CC&Rs on the plat of such property, or by recording an additional Declaration, and thereafter such additional property shall be considered as part of the Property in all respects. This right of the Declarant shall be assignable to one or more assignees.

#### **ARTICLE 31. CARE AND MAINTENANCE OF COMMON PROPERTY**

A. Port Authority Responsibility. The Port Authority shall be responsible for care and maintenance of any common property and improvements thereon. Each Owner will be assessed a monthly fee proportionate to the amount of land owned/leased to cover common expenses such as, but not limited to, landscaping maintenance, snow removal, utility charges, repair and maintenance of all common areas, roadways and utilities, property tax and insurance, for which the Port Authority is responsible.

B. Damage to and Repair of Common Property. Any damage to common property and improvements caused by any Owner and/or their agents, guests or invitees must be repaired by the Owner as soon as possible after such damage is discovered, and in the event of failure of the Owner to make such repairs after at least fifteen (15) days written notice, the Port Authority may make such repairs and the expense of such repair shall be borne by the Owner. The Port Authority shall have the right, privilege, license to cause such repair and maintenance to be performed and charge the owner of said lot the cost of such repair and maintenance plus an administrative fee of fifteen percent (15%) of such cost. Such cost shall be treated as an operating expense.

C. Liability Insurance. The Port Authority shall at all times maintain or cause to be maintained continuously in force public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about, or by reason of activities within, the common roadways and common areas. Such insurance shall be carried with a responsible company or companies and the limits thereof shall be such as to afford at least the coverage provided by a "combined single limit" of \$5,000,000 for bodily injury, death and

property damage.

D. Casualty Insurance. The Port Authority shall at all times maintain or cause to be maintained continuously in force casualty insurance to provide for insurance against the perils of fire, lightning, windstorm, hail, explosion, riot, damage from aircraft or vehicles, smoke damage, water damage, theft, vandalism, malicious mischief, and any other perils typically included within "extended coverage." Such insurance shall be carried with a responsible company or companies.

E. Taxes. Each Owner shall be obligated to pay, before delinquency, all taxes on the Lot(s) owned by said Owner including taxes on those portions of such Lot located within common maintenance areas.

### **ARTICLE 32. ASSESSMENTS**

A. Creation of Lien and Personal Obligation. Each Owner, by acceptance of patent, deed or other conveyance, whether expressed or not, covenants and agrees to pay to the Port Authority, assessments, including charges and interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such Lot at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent. The Declarant shall not be subject to assessments or the lien for assessments.

B. Purpose. The assessments levied by the Port Authority shall be used by the Port Authority only for operating expenses of the Property including, but not limited to governmental fees, costs of accounting, sending bills, insurance premiums and deductibles, acquisition, maintenance, repair and operation of common property and other facilities and improvements beneficial generally to the Property, the payment of taxes on common property and insurance thereon maintained by the Association, and the establishment of a reserve account for repair, maintenance and replacement of the common property which must be replaced on a periodic basis.

C. Rate. Assessments shall be fixed on a pro rata basis for all Lots that have been sold by the Declarant, based on the size of the Lots.

D. Date of Commencement. The assessment due dates shall be established by the Port Authority.

E. Roster. The Port Authority shall prepare a roster of the Lots and the assessments applicable thereto at the same time that it shall fix the amount of the assessment, which roster shall be kept by the Port Authority, which shall record payments of assessments and shall allow

inspection of the roster by any Owner or member at reasonable times.

F. Certificate of Paid Assessment. The Port Authority shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Port Authority setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

G. Non-Payment. Any assessment or installment thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Port Authority shall set) until paid. In addition, a late fee of fifty dollars (\$50.00) for each delinquent installment shall be imposed.

The Port Authority may either (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the Owner's Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or may restrict, limit, or totally terminate any or all services performed by the Port Authority on behalf of the delinquent Owner.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee.

No Owner may waive or otherwise escape liability for the assignments provided for herein by non-use of the common property or by abandonment of the Lot.

H. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

### **ARTICLE 33. DURATION OF RESTRICTIONS**

This Declaration and the CC&Rs herein shall run with and bind the land for a period of twenty (20) years from the date this document is recorded, after which time said Declaration and the CC&Rs herein shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

#### **ARTICLE 34. ENFORCEMENT**

This Declaration and the CC&Rs herein are for the benefit of the Declarant, and the Owner or Owners of any Lot, part or portion of the Property. This Declaration and the CC&Rs herein shall inure to the benefit of and pass with each Lot, part or portion of the Property and shall apply to and be binding upon each successor in interest. These CC&Rs are covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any breach thereof, or the continuance of any breach or noncompliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant or the Owner or Owners of any Lot, part or portion of the Property; provided, however, that no such enforcement shall affect or impair the lien of any bona fide mortgage or trust deed which was given in good faith and for value, except that any subsequent owner of a Lot, part or portion of the Property shall be bound and obligated by the CC&Rs, whether the ownership is obtained by foreclosure, at a trustee's sale, or otherwise. All attorney's fees and costs and expenses incurred in any such enforcement action shall constitute a lien on such Owner's Lot, and shall also be a personal obligation of the Owner, enforceable at law, until payment is made.

#### **ARTICLE 35. CONSTRUCTION AND AMENDMENT**

The provisions of this Declaration and the CC&Rs herein shall be liberally construed to effect all of their intended purposes. During the Development Phase (defined below), this Declaration and the CC&Rs herein may be modified, amended or repealed in whole or in part at any time and from time to time by the Declarant or its successor or assigns by recorded instrument. The "Development Phase" shall be the time from the date of the recording with the County Recorder of the Plat until such time as the Trust Lands Administration transfers legal title to more than ninety percent (90%) of the total acreage to bona fide purchasers. After the Development Phase, this Declaration or any CC&R contained herein, may be modified or amended, as to the whole of said Property or any portion thereof, with the written consent of the owners having sixty-six percent (66%) of the votes in the Association, provided however, that so long as Declarant owns a Lot, no such modification shall be effective without Declarant's written consent.

#### **ARTICLE 36. NO WAIVER OF IMMUNITY**

To the extent that the Trust Lands Administration, any of its employees, agents or representatives are entitled to sovereign or governmental immunity, nothing herein shall be deemed a waiver of such immunity.

#### **ARTICLE 37. BUSINESS AND SERVICE AREA**

A. Location. The designated Business and Service Area is depicted on the Map, attached hereto and incorporated herein.

B. Applicability of Declaration. The Business and Service Area is subject to this Declaration and all CC&Rs herein.

C. Additional Specific Covenants. The following covenants are applicable only to the Business and Service Area:

1. Type of Buildings. The buildings in this area will be Class "B" buildings. Class "B" buildings that are constructed from concrete, masonry or steel with plaster exterior that would be of a quality that would be considered Class "B" by any architect and/or appraiser. No building in this area will have any portion of it at a height higher than thirty-five (35) feet above adjacent ground elevations.

2. Type of Uses. Use of the Lots and buildings in the Business and Service Area will be primarily service-related and/or office based. Manufacturing uses are not allowed in this Area.

#### **ARTICLE 38. COMMERCIAL AREA**

A. Location. The designated Commercial Area is depicted on the Map, attached hereto and incorporated herein.

B. Applicability of Declaration. The Commercial Area is subject to this Declaration and all CC&Rs herein.

C. Additional Specific Covenants. The following covenants are applicable only to the Commercial Area:

1. Type of Buildings. The buildings in the Commercial Area will be either concrete tilt-up or masonry. No building or portion of building in the Commercial Area may be constructed with a metal exterior. No building in this in the Commercial Area will have any portion of it at a height higher than thirty-five (35) feet above adjacent ground elevations.

2. Type of Uses. Use of the Lots and buildings in the Commercial Area will be primarily service-related and/or office based. Manufacturing uses are not allowed in this Area. Warehousing and fulfillment are allowed uses. No outside storage is allowed within this Commercial Area.

#### **ARTICLE 39. INDUSTRIAL AND TRANSPORTATION AREA**

A. Location. The designated Industrial and Transportation Area is depicted on the Map, attached hereto and incorporated herein.

B. Applicability of Declaration. The Industrial and Transportation Area is subject to

