

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS FOR
WESTFIELD VILLAGE COMMERCIAL CENTER**

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS FOR
WESTFIELD VILLAGE COMMERCIAL CENTER**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WESTFIELD VILLAGE COMMERCIAL CENTER, LARAMIE, WYOMING is made and entered into this ___ day of February, 2005, by WESTFIELD LAND DEVELOPMENT, LLC, a Wyoming Limited Liability Company (Declarant).

RECITALS

A. Declarant is the Owner of certain real Property located in the City of Laramie, County of Albany, State of Wyoming, legally described on Exhibit "A" attached hereto and incorporated herein by this reference (Property). The Property is subject to this Declaration.

B. The purpose of Declarant in making this Declaration is to create a planned common interest community known as Westfield Village Commercial Center.

C. Declarant intends to ensure the attractiveness and harmony of design and function of the Property, including the Buildings, off-street parking, signage, vehicular and pedestrian access, Landscaping, and other Improvements constructed on it; to protect and enhance the values and amenities of the Property; to provide for the administration, operation, use, and maintenance of Common Element; and to promote the safety and welfare of the Owners and Occupants of Property in the Project.

ARTICLE I. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

1.1 Imposition of Covenants. Declarant hereby makes, declares, and establishes the following covenants, conditions, restrictions, and easements (Covenants) which shall affect all of the Property. From this day forward, the Property shall constitute a planned common interest community known as Westfield Village Commercial Center, and shall be held, sold and conveyed subject to these Covenants. These Covenants shall run with the land and shall be binding upon all Persons having any right, title, or interest in all or any part of the Property, including Declarant, and its heirs, successors, assigns, tenants, employees, guests, and invitees. These Covenants shall inure to the benefit of each Owner of the Property or part thereof.

1.2 Development and Use. Upon completion, Westfield Village Commercial Center shall consist of quality retail, professional and general office, and other similar commercial uses.

ARTICLE II. DEFINITIONS

When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms are defined as follows:

2.1 "Allocated Interests" shall mean and refer to liability for Common Expenses and votes in the Association.

2.2 "Annual Assessments" shall mean the Assessments levied annually pursuant to Section 12.3.

2.3 "Design Review Committee" or "DRC" shall mean and refer to the Design Review Committee as

established pursuant to this Declaration.

2.4 "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation which have been filed with the Secretary of State of Wyoming to create Westfield Village Commercial Center Association, as such Articles may be amended from time to time.

2.5 "Assessments" shall mean and refer to all Common Expense Assessments, Special Assessments, Default Assessments, Individual Assessments, and Fines levied by the Executive Board pursuant to this Declaration, the Bylaws or the Rules and Regulations.

2.6 "Association" or "Commercial Center Association" shall mean the Westfield Village Commercial Center Association, a Non-Profit Corporation, or any successor to said Association by whatever name, charged with the duties and obligations set forth in these Covenants.

2.7 "Building" shall mean and refer to (but shall not be limited to) the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and docks, storage facilities, canopies, enclosed malls, porches, courtyards, and dedicated drive through facilities (to the extent permitted hereunder).

2.8 "Building Site" shall mean and refer to the areas shown as such on any recorded Plat with respect to any portion of the Property, or as otherwise approved in writing by the Declarant or the Executive Board, or in a Plat, development plan or other P.U.D. document approved by the City. In the absence of any such specific designation, the "Building Site" shall consist of the actual Building envelope, as constructed, together with any landscape area, sidewalks or other pedestrian facilities and exclusive drive-through facilities contiguous to such Building, and driveway and parking areas (if any) located on a Lot and not included in the Common Area. Once initially established, the Building Site will not be altered or relocated without the consents of the Owner of the Lot affected, the Design Review Committee, and where required by law, the City, which consents shall not be unreasonably withheld.

2.9 "Bylaws" shall mean and refer to any instructions, however denominated, which are adopted by the Commercial Center Association for the regulation and management of the Commercial Center Association, including amendments to the same.

2.10 "City" shall mean the City of Laramie, Wyoming.

2.11 "Common Element" shall mean and refer to any real estate, easements or other real estate interests within the Commercial Center owned or leased by the Association, other than a Lot. Unless otherwise permitted by amendment of this Declaration, the "Common Element" shall be limited to the real Property described on Exhibit "B" attached hereto and incorporated herein by this reference, and the Improvements located (or to be located) thereon, and other appurtenances as are necessary or desirable for the full use and enjoyment of such Improvements by the Members of the Association and Owners and Occupants of Buildings and Lots within the Commercial Center.

2.12 "Common Expense Assessments" shall mean and refer to all Assessments made for Common Expenses and levied by the Executive Board.

2.13 "Common Expenses" shall mean and refer to the expenditures made or financial liabilities incurred for the Ownership, use, operation, regulation, maintenance and repair of the Common Element and operation and management of the Commercial Center Association. These expenses include, but are not necessarily limited to:

- (a) Expenses of administering, maintaining, leasing, insuring, repairing or replacing the Common Element and facilities and Improvements located thereon.

- (b) Expenses declared to be Common Expenses by this Declaration.
- (c) Expenses agreed upon as Common Expenses by the Association.
- (d) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Element or any other real or Personal Property acquired or held by the Association.
- (e) Management fees.
- (f) Expenses incurred in connection with the use, operation, maintenance and repair of the irrigation water system provided to serve the Common Element.
- (g) Taxes, fees, and similar charges.

2.14 "Common Facilities" shall mean and refer to the following when located on the Common Element:

- (a) Any storm drainage Improvements or facilities located on any, excluding, however, any such facilities owned and maintained by the City of Laramie.
- (b) Irrigation system pumps, hardware and related equipment (if any) acquired, installed and used by the Association for watering any Common Element.
- (c) Signage, bicycle racks, benches, mailboxes, trash and recycling storage, and similar amenities owned by the Association and installed on the Property by the Association for the common benefit of the Owners and Occupants.
- (d) Any common utility, ingress, egress or access easements for which the Association is from time to time made responsible by the Owners.
- (e) Parking facilities, streets, sidewalks, trails, traffic controls, and driveways.

2.15 "Declarant" shall mean and refer to Westfield Land Development, LLC, or any other Person or group of Persons acting in concert who (a) as a part of a common promotional plan, offers to Dispose of to a purchaser a Declarant's interest in a Lot not previously Disposed of to a purchaser; or (b) reserves or succeeds to any Special Declarant Right.

2.16 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements for the Commercial Center, including any amendments hereto and also including, but not limited to, any Plats of the Commercial Center recorded in the Office of the Clerk and Recorder of Albany County, Wyoming.

2.17 "Default Assessment" shall mean an Assessment levied by the Association pursuant to Article XII.

2.18 "Design Guidelines" shall mean the guidelines and rules published, amended, and supplemented from time to time by the Design Review Committee (DRC).

2.19 "Director" shall mean and refer to a Member of the Executive Board.

2.20 "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a Security Interest.

2.21 "Documents" shall mean the basic Documents creating and governing Westfield Village Commercial Center, including, but not limited to, the Declaration, the Articles of Incorporation and Bylaws, the Design Guidelines, the Commercial Center Rules and Regulations, Development Agreement, as amended, and any other procedures, rules, regulations or policies adopted under such Documents by the Association or the Design Review Committee (DRC).

2.22 "Executive Board" shall mean and refer to the Executive Board designated in the Declaration to act on behalf of the Association.

2.23 "Expansion Property" shall mean such additional real Property owned or subsequently acquired by Declarant or subject to an option to purchase held by Declarant, which Declarant may make subject to the provisions of this Declaration by duly recorded Declaration of Annexation.

2.24 "Fines" shall mean and refer to any monetary penalty imposed by the Executive Board against a Member or Owner because of a violation of this Declaration, Design Guidelines, Articles of Incorporation, Bylaws or the Rules and Regulations by such Member or Owner.

2.25 "Improvement(s)" shall mean all Buildings, structures, parking areas, fences, walls, Landscaping, hedges, plantings, lighting, poles, driveways, streets, alleys, ponds, irrigation facilities, swimming pools, recreational equipment, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, street or alley construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior Improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" includes both original improvements and all later changes and improvements.

2.26 "Landscaping" shall mean and refer to a space of ground covered with decorative fixtures, lawn, ground cover, shrubbery, trees, flowers and other plant materials which may be complimented with earth berms, masonry, rock or bark mulch or other ground cover and other similar landscaping materials, together with irrigation/sprinkler systems associated with same (but excluding such systems if owned by another entity with which the Association contracts for such service), all harmoniously combined with other Improvements.

2.27 "Lot" shall mean and refer to a physical portion of the Commercial Center which is designated for separate Ownership or occupancy and the boundaries of which are described in or determined from the applicable Declaration(s) and recorded Plats, including individual Building envelopes. The governing legal descriptions of the Lots shall be determined in accordance with the appropriate recorded Plat and Declaration(s). Such Lots shall be governed by this and such other Declarations as apply to each Lot.

2.28 "Manager" shall mean and refer to a Person employed or engaged to perform management services for the Association.

2.29 "Member" shall mean any Person holding Membership in the Westfield Village Commercial Center Association.

2.30 "Mortgage" shall mean any Mortgage, deed of trust, or other document which is recorded in the office of the Clerk and Recorder of Albany County, Wyoming, and which encumbers any portion of the Property or interest therein as security for the payment of a debt or obligation.

2.31 "Occupant" shall mean and refer to any Person or entity, whether it be an individual, corporation, joint venture, trust, limited liability company, partnership, Association or other legal entity, which has purchased, leased, rented or otherwise legally acquired the right to occupy and use any Building or Lot, whether or not such right is exercised.

2.32 "Owner" shall mean the Owner of record, including Declarant, and including a contract purchaser, whether one or more Persons of fee simple title to any Lot, but shall not mean or refer to any Person who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

2.33 "Owner's Membership Interest" shall mean and refer to the percentage of Membership of an Owner of a Building situated on the Property which shall be equal to that proportion which the gross area contained within such Owner's Building expressed in square feet, bears to the gross area contained within all Owners' Buildings situated on the Property.

2.34 "Period of Declarant Control" shall mean the period during which Declarant may appoint and remove Directors and Officers of the Association. The Period of Declarant Control will begin on the date this Declaration is first recorded in the office of the Clerk and Recorder of Albany County, Wyoming, and will end no later than: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that are created within the Property and the Expansion Property, to Owners other than Declarant; (ii) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of commercial sales; or, (iii) the date on which Declarant voluntarily terminates the Period of Declarant Control by recording a notice to that effect in the office of the Clerk and Recorder of Albany County, Wyoming, whichever of the foregoing dates or events occurs first.

2.35 "Person" means a natural Person, a corporation, a partnership, a limited liability company, an Association, a trust or any other entity or combination of the foregoing.

2.36 "Plat" shall mean any engineering survey or surveys of all or part of the Property, together with such other diagrammatic plans and information regarding the Property as may be required by any applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the office of the Clerk and Recorder of Albany County, Wyoming.

2.37 "Commercial Center" shall mean the planned common interest community created by this Declaration, consisting of the Property, including any Expansion Property, and all of the Improvements located on the Property.

2.38 "Property" shall mean and include the Property described on Exhibit "A" and initially subjected to this Declaration and any Expansion Property from time to time made subject to these Covenants.

2.39 "Security Interest" shall mean and refer to an interest in real estate or Personal Property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a Mortgage, deed of trust, trust deed, financing statement, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an Ownership interest, and any other consensual lien or title retention contract intended as security for an obligation.

2.40 "Security Interest Holder" shall mean and refer to a Person owning a Security Interest in a Lot situated on the Property, except the Security Interest for real Property taxes and Assessments made by Albany County, Wyoming, or other governmental authority having jurisdiction over the Lot.

2.41 "Special Assessment" shall mean an Assessment levied pursuant to Section 12.4 by the Executive Board.

2.42 "Special Declarant Rights" shall mean and refer to the rights reserved for the benefit of the Declarant to perform those acts specified in Article XVII of this Declaration.

2.43 "Successor Declarant" shall mean any Person to whom Declarant assigns any or all of its rights, obligations or interests as Declarant, as permitted by the Commercial Center Documents.

ARTICLE III. THE COMMERCIAL CENTER

3.1 Establishment of Planned Community. By this Declaration, the Westfield Village Commercial Center is established as a planned common interest community consisting of high quality retail, commercial, general office, and similar uses.

3.2 Declaration of Lot Boundaries. The boundaries of each Lot are designated on the Plat, and each Lot is identified by the number or address noted on the Plat or arranged by Albany County.

3.3 Plat. The Plat shall be filed for record in the office of the Clerk and Recorder of Albany County, Wyoming. The Plat may be filed as a whole or as a series of Plats from time to time. Any Plat filed subsequent to the first Plat shall be termed a supplement to the Plat, and the numerical sequence of each supplement shall be shown on it.

ARTICLE IV. ASSOCIATION AS ATTORNEY-IN-FACT

Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with any Improvements on the Common Element. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE V. THE ASSOCIATION

5.1 Association Management Duties. Subject to the rights and obligations of Declarant as set forth in this Declaration, and the rights and obligations of the Owners, the Association shall be responsible for the administration and operation of the Property as provided by this Declaration. In addition, the Association may undertake contractual responsibilities relating to other Property, facilities or services that are used by or available to the Owners under arrangements, including, without limitation, those described in this Article.

The Executive Board shall exercise for the Association all powers, duties and authorities vested in or obligated to be taken by the Association and not reserved to Declarant, or other applicable law.

5.2 Common Element and Improvements. Declarant shall transfer to the Association by Special Warranty Deed those tracts constituting the Common Element located within the Property, from time to time, subject to various easements as dedicated on any Plat or by separate recorded instrument. Declarant shall transfer to the Association by written instrument any Improvements located on the Common Element after the Declarant has completed the construction of such Improvements thereon. From time to time before the expiration of the Special Declarant Rights Period, Declarant may, but shall not be obligated to, convey to the Association, by written instrument recorded with the Clerk and Recorder of Albany County, Wyoming, certain other parts of the Property (including the Expansion Property) as Common Element.

The Common Element generally is designated by this Declaration for the common use, benefit and enjoyment of the Owners, Occupants, employees, tenants, guests and invitees, and such other Persons as may be permitted to use the Common Element, as Declarant may specify. Nothing in this Declaration or the other Commercial Center Documents shall be construed as a dedication to public use, or a grant to any public municipal or

quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Element by such authority or utility, absent an express written agreement to that effect.

5.3 Association's Responsibility for Common Element. The Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Element conveyed pursuant to Section 5.2, above, and all Common Facilities and Improvements on the Common Element (including any equipment related thereto), and shall keep it in good, clean, and attractive condition and repair, pursuant to the terms and conditions of this Declaration. The Association shall maintain, repair, replace, beautify and keep neat, attractive, and in good order all of the Common Element, Common Facilities, Improvements, Landscaping, exterior lighting, open space, wetlands owned by or which is the responsibility of the Association.

Any use of the Common Element and Common Facilities by Owners, Occupants, employees, tenants, guests and invitees, and such other Persons permitted access to the Common Element shall be subject to and governed by any applicable Commercial Center Rules. The Association, acting through the Executive Board, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Element without the independent approval by the Owners; subject, however, to the right of Declarant and the Owners to use the Common Element as provided in this Declaration.

5.4 Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) Membership per Lot owned, but all of the Persons owning each Lot shall be entitled to rights of Membership and of use and enjoyment appurtenant to such Ownership.

5.5 Classes of Membership and Voting Rights. The Association shall have one class of voting Membership composed of all Owners, including Declarant. All Members shall be entitled to vote on Association matters on the basis of each Member's Ownership Interest, as defined. The votes cast in favor or in opposition to any issue before the Membership shall be tallied on the basis of the Owners' Membership Interests in the Property actually voting. Any dispute concerning the Owners' Membership Interests voting on an issue shall be determined by reference to the real estate records of Albany County including the Final Plat and any amendments thereto and recorded Documents, or the most recent Declaration of the Declarant or Executive Board, whichever applies.

When more than one Person is an Owner of any Lot, all such Persons shall be Members. The vote for such Lot may not be divided, but must be a single act exercised by one Person as the Owners collectively determine. Any Person, upon becoming a Member, on request shall furnish to the Secretary of the Association a photocopy or certified copy of the recorded instrument, lease, or other written evidence, vesting the party with the interest required to become a Member of the Association.

5.6 Allocated Interests. The liability for Common Expense and votes in the Association allocated to each Lot are set forth as follows:

(a) Except as specifically provided to the contrary in this Declaration, the percentage of liability for Common Expenses shall be allocated on the basis of each Owner's Membership Interest for their respective Lot(s) in the Commercial Center; and,

(b) The number of votes in the Association shall be allocated on the basis of each Owner's Membership Interest for their respective Lot(s) in the Commercial Center.

5.7 Appointment of Officers and Directors by Declarant. Until the expiration of the Period of Declarant Control, Declarant shall retain the exclusive powers to appoint and remove the Directors on Executive Board and Officers of the Association. Notwithstanding the foregoing, Declarant may voluntarily surrender the right

to appoint and remove the Directors and Officers of the Association before the end of the Period of Declarant Control by providing a notice to that effect to the Association and otherwise complying with the procedures for termination of this Special Declarant Right. Upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Period of Declarant Control, Declarant may require that specified actions of the Association as described in an instrument executed and recorded by Declarant in the office of the Clerk and Recorder of Albany County, Wyoming, be approved by Declarant before those actions become effective.

5.8 Budget. Within thirty (30) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the budget is rejected by the vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the Owner's Membership Interests in the Association are allocated, then the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5.9 Owners' and Association's Addresses for Notices. All Owners of each Lot shall have one and the same registered mailing address to be used by the Association or other Owners for notices, bills, and all other communications regarding Association matters. The address shall be that which is assigned by Albany County unless the Owner or Owners of a Lot shall furnish a different registered address to the Secretary of the Association after receiving title to the Lot. The registration shall be in written form and signed by all of the Owners of the Lot or their authorized representative(s). If all of the Owners cannot agree, then the assigned address of the Lot shall be deemed the registered address until another registered address is furnished as required under this Section.

If the address of the Lot is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any Person occupying the Lot or sent to the Lot by first class mail. If the Lot is unoccupied, the notice shall be held and available for the Owners at the principal office of the Association.

All notices, demands, and correspondence intended to be served upon the Executive Board shall be sent to the address of the Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

5.10 Compliance with Documents. Each Owner shall abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Commercial Center Documents.

5.11 Rules and Regulations. The Association, from time to time and subject to the provisions of the Commercial Center Documents, may adopt, amend and repeal "Commercial Center Rules and Regulations" governing, among other things and without limitation:

- (a) The use of the Common Element and Common Facilities; and
- (b) The use of parking facilities, streets, driveways, sidewalks, trails, trash and recycling storage, and similar amenities, if any, within the Commercial Center.

A copy of the Commercial Center Rules and Regulations in effect shall be distributed to each Member of the Association. Any change in the Commercial Center Rules and Regulations shall be distributed to each Member within a reasonable time following the effective date of the change. Without limiting the generality of the foregoing, the Board may suspend voting rights of a Member after notice and hearing and take such enforcement action as provided in the Bylaws for an infraction of the Commercial Center Rules and Regulations.

5.12 Cooperation with Other Associations. The Association shall have the right, power and authority to

contract in writing with other Associations governing common interest communities within the Commercial Center for services involved in management of the Association's affairs. Any such contract may provide for payment by the Association of the reasonable estimated expense of providing such services, including in such event the fair share of the overhead expenses of the other Association.

5.13 Cooperation with Local Government. The Association will cooperate with local governmental and quasi-governmental authorities in all respects to enable the Association and such authorities to efficiently and economically provide their respective services to the Owners. It is contemplated that from time to time either the Association or any of those authorities may use the services of the other in furthering their respective obligations, and they may contract with each other to better provide for such cooperation.

5.14 Cooperation with Developers. The Association may cooperate with developers of adjacent parcels, including, without limitation, parcels developed for residential or commercial purposes, in all respects to enable the Association and the Owners of such properties and/or Associations representing same, to efficiently and economically provide appropriate services to the Owners of the respective parcels. It is contemplated that from time to time either the Association or any of those authorities may use the services of the other in furthering their respective obligations, and that they may contract with each other to better provide for such cooperation and services.

5.15 Manager. The Association may employ or contract for the services of a Manager to act for the Association in the furtherance of Association purposes according to the powers and duties delegated to the Manager pursuant to the Bylaws or resolution of the Board, provided that no such employment shall be by a contract having a term of more than three (3) years, and each such contract shall be subject to cancellation by the Association on ninety (90) days or less prior notice without cause and without payment of a termination fee. The Manager shall not have the authority to make expenditures for additions or Improvements except upon specific prior approval and direction by the Board. The Board or any officer of the Association shall not be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

5.16 Delegation by Association Board. Without limiting the generality of the provisions in this Article, the Executive Board may delegate certain of its powers to any committee or other entity that the Board may choose to form.

Any delegation by the Board under this Article is subject to compliance with the Bylaws, and the Board, when so delegating, will not be relieved of its responsibilities under the Commercial Center Documents.

5.17 Ownership of Personal Property and Real Property for Common Use. The Association, through action of its Executive Board, may acquire, hold, and Dispose of tangible and intangible Personal Property and real Property. The Board, acting on behalf of the Association, shall accept any real or Personal Property, leasehold, or other Property interests within the Commercial Center and conveyed to the Association by Declarant.

5.18 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances to Owners and holders of Security Interests, current copies of the Commercial Center Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. Any Owner or Security Interest Holder may make a written request to the Association for a copy of the financial statements for the preceding year. The Association may charge a reasonable fee for copying such materials.

5.19 Maintenance Reserves. The Association shall establish and maintain an adequate reserve fund from Annual Assessments for maintenance, repair or replacement of Common Element and Improvements and for any other facilities for which contribution from the Association is required.

5.20 Implied Rights and Obligations. The Association shall perform all of the duties and obligations imposed on it expressly by the Commercial Center Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Commercial Center Documents or reasonably necessary to satisfy any such duty or obligation reasonably to be implied from the express provisions of the Commercial Center Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege: (i) given to it expressly by the Commercial Center Documents; (ii) reasonably to be implied from the existence of any right or privilege given expressly by the Commercial Center Documents; or, (iii) reasonably necessary to effectuate any such right or privilege.

5.21 Litigation Matters. The Association and its officers and Directors shall have no obligation, right, or authority, to administer, manage, investigate, report, litigate, arbitrate, mediate or otherwise be involved in any claims or disputes asserted, or which might be assertable, by individual Owners against any Declarant, Owner, developer, contractor or other party with regard to alleged construction defects, express or implied construction warranties or similar claims or actions pertaining to any Building or other Improvements constructed in or on any Lot within the Commercial Center (Claim). Without limiting the foregoing, the Association shall not be considered a proper party in interest in any such action or proceeding with respect to any Claim. Without limiting the foregoing, the Association shall not be involved directly or indirectly, in organizing, administering, supervising, managing or otherwise soliciting involvement in any class action or litigation in connection with any Claim.

Nothing herein contained shall be construed as limiting the rights and obligations of the Association with respect to the assertion of claims with respect to any Improvements located within or upon the Common Element, nor shall it preclude the assertion of any Claims directly by an individual affected Owner of a Lot.

Due to the foregoing restriction, neither the Executive Board nor the Association will have any obligation, responsibility or liability to any Owner or Member on account of the existence of any Claims or refusal of the Association or the Executive Board to pursue any such Claims.

ARTICLE VI. PERMITTED USES

6.1 General Permitted Uses. No noxious, offensive or hazardous trades, services or activities shall be conducted on any portion of the Property, nor shall any trades, services or activities be performed thereon which may be or become an annoyance or nuisance to any Owner or Occupant of any portion of the Property, including, without limitation, allowing or creating unsightliness or excessive emission of fumes, odors, glare, vibration, electromagnetic disturbance, gases, radiation, dust, liquid waste, smoke or noise.

6.2 Specific Permitted Uses. The following uses shall specifically be considered as permitted uses within the Property:

- (a) Office and general light business use, including, without limitation, retail establishments, hotels, medical/dental offices, commercial or business offices, banks, savings and loan associations, credit unions, finance offices, travel agencies, insurance offices, optician and optometrist offices, title insurance offices, real estate brokerage offices, day care, educational facilities (but not primary or secondary schools), and other similar business uses permissible under the zoning and/or planned unit development ordinances and regulations of the City.
- (b) Light industrial uses such as scientific research facilities and similar non-offensive light industrial uses as may be permitted by applicable zoning or planned unit development ordinances and regulations of the City and allowed by the Executive Board.
- (c) Skilled care facility, an assisted living center, and multi-family apartments.

6.3 General Prohibited Uses. Notwithstanding the foregoing, the following uses shall not be permitted within or upon the Property:

- (a) Bar, tavern, adult bookstore, arcades or video game parlors, adult entertainment facilities, tattoo parlors, sale of drug paraphernalia, or massage parlors.
- (b) Heavy industrial or manufacturing uses.
- (c) Single-family residential uses.

6.4 Conditional Permitted Uses. No drive-through car wash, or other facility providing vehicular drive-up or drive-through customer service shall be located within or upon the Property unless the Executive Board has provided its written consent (which shall not be unreasonably withheld) to the location and design of drive lanes of such drive-in facility and the effects of same on parking on both the Lot affected and parking and access over and through the Property in general. Furthermore, no convenience store, gas station or similar facility shall be located within or upon the Property unless the Executive Board has provided its written consent (which shall not be unreasonably withheld), but which shall require and impose strict architectural guidelines and restrictions designed to protect the aesthetic quality of the project located on the Property, and to minimize the aesthetic and other impacts of said use on the surrounding Lots.

6.5 Uses Not Otherwise Listed. Lawful operations and uses which are neither specifically prohibited nor specifically authorized by these restrictions may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by the Executive Board. Approval or disapproval of such operational plans and specifications shall be based upon the environmental and aesthetic effect of such operations or uses on other portions of the Property subject to these restrictions or upon Occupants thereof. If the Executive Board fails either to approve or to disapprove such operational plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the Executive Board has disapproved said plans and specifications.

6.6 Subdivision of Lots. Further subdivision of any Lot following the approval and recordation of the first approved Plat establishing such Lot, or submission of an application or request for zoning change or P.U.D. amendment which would be inconsistent with the uses contemplated by this Declaration, shall be prohibited without the prior written consent of Declarant, the Design Review Committee and the Executive Board. Notwithstanding the foregoing, during the Period of Declarant Control, Declarant expressly reserves the right to reconfigure, realign or relocate all or any portions of the Property, or further subdivide same, provided that any such reconfiguration, realignment, relocation or re-subdivision shall be: (i) subject to approval by the City or any other appropriate governmental agency, if required by applicable law or ordinance; and (ii) shall be generally consistent with the intended overall use and development of the Property as contemplated by this Declaration.

ARTICLE VII. DESIGN REVIEW COMMITTEE (DRC)

7.1 Committee and Guidelines. There is hereby established a Design Review Committee (DRC) which shall be responsible for the establishment and administration of Design Guidelines to facilitate the purposes and intent of this Declaration. The DRC may issue and enforce Design Guidelines applicable to the Commercial Center. The DRC may amend, vary, repeal and augment the Design Guidelines from time to time, based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Commercial Center or other factors as necessary or desirable to fulfill the intent of the Design Guidelines and implement the purposes of this Declaration. The Design Guidelines shall be binding on all Owners and other Persons governed by this Declaration.

7.2 DRC Membership and Organization. All Members of the DRC shall be appointed, removed and replaced by Declarant, in its sole discretion until such time as Declarant no longer own any Lots within the Commercial Center, unless Declarant earlier waives this right by notice to the Association recorded in the office of the Clerk and Recorder of Albany County, Wyoming. At such time, the Executive Board shall succeed to the

Declarant's right to designate the number of and to appoint, remove or replace the Members of the DRC. The Declarant and Directors may serve as Members of the DRC.

7.3 Purpose and General Authority. The DRC shall review, study, and either approve or reject proposed Improvements on all Lots situated on the Property to ensure compliance with this Declaration and other Commercial Center Documents. No Improvements shall be modified, demolished, or constructed until plans for the Improvements have been approved by the DRC and the City, if administrative approval is required. All Improvements shall be constructed only in accordance with approved plans.

7.4 DRC Discretion. The DRC shall exercise its best judgment to see that all Improvements conform and harmonize with the Design Guidelines and the other Commercial Center Documents.

7.5 Binding Effect. The actions of the DRC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties, except to the extent the plans or other information are subject to administrative approval of the City or appeal.

7.6 Organization and Operation of DRC. The organization and operation of the DRC shall conform to the following:

(a) Term of Members. The term of office of each Member of the DRC shall continue at the pleasure of the Executive Board pursuant to Section 7.2, and run until his successor shall have been appointed. Should a DRC Member die, retire or become incapacitated, or in the event of a temporary absence of a Member, a successor may be appointed as provided in Section 7.2.

(b) Chairman. The chairman of the DRC shall be elected annually from among the Members of the DRC by a majority vote of such Members. In the absence of a chairman, the Members may appoint or elect a successor, or if the absence is temporary, an interim chairman.

(c) Review of Plans. The DRC shall consider and act upon any and all requests submitted for its approval. The DRC shall approve plans and specifications submitted to it only if it determines that the construction, modification, and additions contemplated thereby, and in the location as indicated, will comply with this Declaration, Design Guidelines, and all relevant Documents. The issuance of a Building permit or license for the construction of Improvements inconsistent with this Declaration shall not prevent the Association or any Owner from enforcing the provisions of this Declaration as provided by Section 7.10, below.

(d) Expert Consultation. The DRC may avail itself of other technical and commercial advice and consultants as it deems appropriate, and the DRC may delegate its plan review responsibilities, except final review and approval, to one or more of its Members or to consultants retained by the DRC.

7.7 Expenses. Except as provided in this Section, all expenses of the DRC shall be paid by the Association and shall constitute a Common Expense. The DRC shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the DRC from time to time. The Members of the DRC shall not be entitled to any compensation for services performed pursuant to these Covenants.

7.8 Other Requirements. Compliance with the Commercial Center design review process is not a substitute for compliance with City building, zoning, subdivision or other regulations. Each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction of Improvements.