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COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT

(The Trax Phase I: SWC Route 66 & 4th Street, Flagstaff, Arizona)

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COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Agreement"), dated for identification only as of October 3, 2014, is made by EVERGREEN–TRAX LLC, an Arizona limited liability company ("ETLLC").

RECITALS

A. Declarant is the Owner and developer of real property in Flagstaff, Coconino County, Arizona, described on *Exhibit A* hereto (the "Development"). Declarant intends to cause the Development to be developed as an integrated commercial development as set forth herein. The current Site Plan for the Development is *Exhibit B* hereto.

B. Some or all of the Development will be conveyed or leased by Declarant. Prior thereto Declarant desires to: (i) subject the Development to the easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards herein set forth; (ii) provide for the use and maintenance of the Development as an integrated commercial development; and (iii) enhance and protect the value and desirability of the Development by encouraging attractive Improvements at appropriate locations, preventing haphazard or inharmonious development, assuring adequate pedestrian and vehicular ingress, egress and circulation through the Development and to and from adjacent public rights-of-way, providing for on-site parking, loading and drainage facilities, assuring attractive landscaping and lighting, and otherwise regulating the development, use and operation of the Development.

NOW, THEREFORE, Declarant declares, on behalf of all present and future Owners, that the Development is and from and after the recording hereof will be held, conveyed, encumbered, leased, used, occupied and improved subject to the following easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and standards, which are in furtherance of a plan for the mutual and reciprocal benefit and enjoyment of all of the Development and to enhance and protect its value as a whole:

ARTICLE 1 - DEFINITIONS

When used at any place in this Agreement the capitalized term:

1.1 "Approved Final Plans" has the meaning provided by Section 4.5.

1.2 "Approved Preliminary Plans" has the meaning provided by Section 4.5.

1.3 "Association" has the meaning provided by Section 14.4.

1.4 "Benefited Parcel" has the meaning provided by Section 11.4.

1.5 "Building" means, at any time, a building or other structure intended for occupancy and then constructed or placed and located on a Parcel.

1.6 "Building Envelope" means the area of a Parcel within which one or more Buildings are permitted to be located, as shown on the Site Plan or a Supplement.

1.7 "Circulation Drives" means driveway corridors designated as Circulation Drives on the Site Plan, including asphalt, curb, gutter and similar improvements. Circulation Drives will be paved and used for vehicular ingress and egress. Declarant reserves the right from time to time to designate portions of the Development as Circulation Drives, or withdraw any of a Circulation Drive previously so designated, as to any of the Development then owned by Declarant. Protected Drives are not Circulation Drives.

1.8 "Circulation Drive Lights" means lights, including poles and standards, on or in the vicinity of and primarily intended to illuminate Circulation Drives, as determined from time to time by Declarant.

1.9 "City" means the City of Flagstaff, including its duly authorized departments and agencies.

1.10 "Common Areas" means, at any time, those portions of the Development outside exterior walls of Buildings then available under this Agreement for the nonexclusive use and enjoyment of all Owners and Permittees, including Circulation Drives and portions intended for use as parking areas (subject to Section 2.1(c)), landscaped areas, sidewalks, walkways, roadways, City-mandated pedestrian plaza or FUTS or public seating areas, and ingress and egress to and from public rights-of-way. Common Areas do not include loading, docking, delivery, service, drive-up or drive-through access, lanes or facilities, exterior areas for dispensing fuel beneath canopies, secured exterior areas of public-storage facilities, fenced exterior play areas of educational or child-care facilities, patio seating or similar outside dining areas, Trash Facilities, or any of a Parcel expressly excluded from Common Areas on the Site Plan or in a Supplement.

1.11 "Common Elements" has the meaning provided by Section 4.10.

1.12 "Common Elements Plans" has the meaning provided by Section 4.10.

1.13 "Common Expenses" has the meaning provided by Section 6.2.

1.14 "COREA" has the meaning provided by Section 18.1(b).

1.15 "County" means Coconino County, Arizona, including its duly authorized departments and agencies.

1.16 "Declarant" means, at any time, ETLLC as the initial holder of rights, privileges and easements granted to or reserved by Declarant in this Agreement, or ETLLC's then duly-authorized successor as Declarant under this Agreement. Any such right, privilege or easement also runs in favor of the agents, employees and contractors of and designated by Declarant.

1.17 "Design Guidelines" means, at any time, any design and development guidelines and standards then promulgated, and as then supplemented or modified, by Declarant for the development and construction of Improvements. On reasonable request, a copy of the Design Guidelines including any approved color and material palette, as they may then be supplemented or

modified in Declarant's discretion, will be available for inspection in an office of Declarant. In approving any plans under Article 4, Declarant may impose design standards and requirements in addition to or that vary from those set forth in the Design Guidelines.

1.18 "Development" means the real property described on *Exhibit A* hereto, subject to Declarant's right to annex or deannex as provided in Section 14.5.

1.19 "Development Agreement" has the meaning provided by Section 18.22.

1.20 "Drainage Pipe " means portions of the Development in the approximate location designated as Drainage Pipe on the Site Plan or in Supplements, used or intended to convey storm water runoff to the Wash Area or otherwise through, over and/or off the Development. The Drainage Pipe does not include any detention, filtering or other treatment facilities for such water prior to its introduction to the Drainage Pipe, which shall be the responsibility of each Parcel Owner. Declarant reserves the right from time to time to designate which portions of any Parcel owned by Declarant constitute portions of the Drainage Pipe.

1.21 "Employee Parking" has the meaning provided by Section 3.4(b).

1.22 "Evergreen" means ETLLC only, and not its successors or assigns in the absence of an assignment and assumption complying with Article 14 of the rights reserved to Evergreen in this Agreement.

1.23 "Final Plans" has the meaning provided by Section 4.5.

1.24 "Force Majeure Delay" has the meaning provided by Section 18.12.

1.25 "FUTS" means the Flagstaff Urban Trails System path through the Development which will be subject to a non-exclusive easement in favor of the City.

1.26 "Hazardous Materials" has the meaning provided by Section 11.3(b).

1.27 "Hazardous Materials Laws" has the meaning provided by Section 11.3(b).

1.28 "Improvements" means Buildings, parking areas, loading areas, refuse, storage and collection areas, fences, walls, paving, sidewalks, landscaping, light poles and bases, lighting, signs, utility installations, bridges and other structures or improvements constructed or placed and located on a Parcel.

1.29 "Including" has the meaning provided by Section 18.14.

1.30 "Manager" means the Person responsible for maintenance under Article 6. Declarant is the Manager until Declarant assigns its rights and obligations as Manager to another Person pursuant to Section 14.1, or resigns as Manager pursuant to Section 14.2.

1.31 "Minor Modifications" has the meaning provided by Section 4.6.

1.32 "Mortgage" has the meaning provided by Section 18.21.

1.33 "Mortgagee" has the meaning provided by Section 18.21.

1.34 "Non-Retail Uses" has the meaning provided by Section 14.1(f).

1.35 "Notice" has the meaning provided by Section 18.1(a).

1.36 "Notifying Owner" has the meaning provided by Section 9.2(c).

1.37 "Owner" means, at any time, the then holder of fee simple title to any relevant Parcel. "Owner" does not include the holder of any lien or encumbrance on or other occupant of a Parcel or Building thereon who does not hold fee title. A Non-Retail Association may be the Owner of a Parcel used for Non-Retail Uses as provided in Section 14.1(f). Subject to any express exception herein, Declarant is an Owner for all purposes of all Parcels owned in fee by Declarant.

1.38 "Owner Maintained Wash Area" has the meaning provided by Section 1.58.

1.39 "Owner's Quorum" has the meaning provided by Section 14.2.

1.40 "Parcel" means a portion of the Development designated as such by this Agreement, in a Supplement, by a Recorded Plat, or by conveyance of part of the Development from Declarant to another Person; *provided that*, once a Parcel is established, that Parcel may not be further subdivided or aggregated with any other Parcel without the prior consent of Declarant. Upon dedication by an Owner to a government authority of fee title to any part of such Owner's Parcel for a public purpose, such part will no longer be part of the Parcel, but will be excluded from the operation and effect of this Agreement as though such portion were not included in the description of the Parcel originally subjected to this Agreement.

1.41 "Permanent Landscaping" means landscape plantings, trees, shrubs, irrigation systems and other landscaping-related improvements within any area designated as "Permanent Landscaping" on the Site Plan, and may also include landscaping and related Improvements in public rights-of-way (including medians) in or adjacent to the Development to any extent a government entity is not responsible for maintaining such landscaping and related Improvements.

1.42 "Permittees" means the tenants or other lawful occupants of a Parcel (other than its Owner), and the employees, agents, contractors, customers, invitees and licensees of: (a) the Owner of the Parcel; and (b) any such tenants or other occupants.

1.43 "Person" means an individual, corporation, partnership, limited liability company, association, trust, government entity, other legal entity, or combination of any of them.

1.44 "Plat" has the meaning provided by Article 15.

1.45 "Preliminary Plans" has the meaning provided by Section 4.4.

1.46 "Private Water and Sewer Mains" means water or sewer mains, lines and appurtenant facilities installed in the Development and serving one or more Owners, as designated by Declarant from time to time.

1.47 "Property Management" has the meaning provided by Section 6.6

1.48 "Property Management Company" has the meaning provided by Section 6.6.

1.49 "Protected Drives" has the meaning provided by Section 4.10.

1.50 "Recorded" means recorded in the official public records of the County.

1.51 "Restricted Use" has the meaning provided by Section 11.4.

1.52 "Retail Uses" has the meaning provided by Section 14.1(f).

1.53 "Shared Sign" means each free-standing sign labeled as such and located or to be located as shown on the Site Plan. Each Shared Sign may be shared by one or more Owners, as determined by Declarant and designated in Supplements. Except as may be otherwise expressly permitted by Declarant, Shared Signs may only be used to identify businesses operated in the Development as provided in Sections 2.1(i) and 9.2.

1.54 "Site Plan" means, at any time, the conceptual site plan for the Development attached as *Exhibit B*, as then supplemented or modified in accordance with this Agreement. Declarant reserves the right from time to time to revise the Site Plan as to any permitted annexation or deannexation, as to the number and location of Shared Signs, and as to any portion of the Development then owned in fee by Declarant, all subject to any express limitations in this Agreement or any Supplement.

1.55 "Supplement" means a writing signed and Recorded by Declarant with respect to a Parcel then owned by Declarant, or by Declarant and the Owner of a Parcel, which supplements this Agreement and may include easements, covenants, conditions or restrictions in addition to or in place of those in this Agreement. Supplements are subordinate to this Agreement. If there is a conflict between this Agreement and a Supplement, the writing containing the more stringent requirement governs, unless otherwise stated in the Supplement. Supplements may be amended as provided therein or Article 17. The term of any Supplement may not exceed the term of this Agreement. If this Agreement is terminated for any reason all Supplements will simultaneously terminate without further action by any party.

1.56 "Transfer" has the meaning provided by Section 13.2.

1.57 "Trash Facilities" has the meaning provided by Section 5.7.

1.58 "Wash Area" means the approximate portion of the Development designated as Wash Area on the Site Plan, with any associated tanks, ponds, basins, slopes, landscaping and related facilities, whether above or below ground. The Wash Area may be used by Owners and Permittees solely for water drainage, open space, landscaping and ancillary purposes determined by Declarant from time to time in its sole discretion. Any Wash Area designated on the Site Plan as "Owner-Maintained Wash Area" must be maintained by the Owner of the Parcel on which such Owner-Maintained Wash Area is situated.

ARTICLE 2 - EASEMENTS

2.1 Grant of Easements. Intending to benefit and burden each present and future Parcel and burden the Development, Declarant grants and reserves:

(a) Easements in favor of Declarant, the Manager, the Owners and their Permittees for driveway purposes and the reasonable passage of pedestrians and motor vehicles (including trucks and delivery vehicles) over and across the Circulation Drives.

(b) Easements in favor of Declarant, the Manager, the Owners and their Permittees for reasonable access, ingress and egress over all driveways, roadways, walkways and sidewalks then surfaced with pavement, concrete, pavers, bricks or similar materials, and constituting part of the Common Areas, so as to provide for the passage of motor vehicles and pedestrians through and between all portions of the Common Areas intended for such purposes, and to and from all abutting public streets or rights of way furnishing access to the Development;

(c) An easement for reasonable parking of motor vehicles by Declarant, the Manager, the Owners and their Permittees in parking stalls or spaces in the Common Areas intended for such purposes; *provided that* this easement does not permit cross-parking by employees of an Owner or its Permittees on another Owner's Parcel, and each Owner shall take reasonable steps to limit to its Parcel parking by such employees, unless otherwise agreed pursuant to Section 3.4(b). Unless otherwise approved by Declarant and the City the Development as a whole must satisfy the minimum and maximum City code parking requirements for its uses. However, if the City and Declarant permit a reduced number of parking spaces on a Parcel or on a combination of Parcels under common ownership, the reduced number satisfies the foregoing minimum requirement. Notwithstanding the foregoing, each Parcel shall additionally satisfy the following minimum parking ratios: (i) Restaurants – one space per 100 square feet of Building area (not including patio area); and (ii) Retail/Other – one space per 300 square feet of Building area. As to any Parcel owned by Declarant, Declarant may in a Supplement terminate the cross-parking easement herein as between the Parcel and balance of the Development, whereupon each Owner shall use reasonable efforts to enforce the prohibition against cross-parking between the Parcel and balance of the Development.

(d) (i) Easements in favor of Declarant, the Manager, and such Owners or other Persons who will use or be served by the easements in each specific instance as Declarant may designate in separate easements or Supplements on, over, under, above and across the Development for the construction, use, operation, maintenance, removal and replacement of Private Water and Sewer Mains, water (domestic, irrigation and fire), gas, electric, telephone, sewer (storm and sanitary), fiber optic and cable television lines, conduits or systems, and similar reasonable and appropriate utilities or services, with rights of ingress and egress thereto; *provided that* all such lines, conduit and systems installed or constructed on another Owner's Parcel must be below the ground or surface of that Parcel (except as provided below); *and provided further that* the approval of the Owner of the burdened Parcel of the location of any such easement must first be obtained. Such approval may not be unreasonably delayed or withheld as long as such easement is at least ten feet from any existing or contemplated Building on the burdened Parcel (including loading or drive-through areas appurtenant to the Building), or if the burdened Parcel is then owned by Declarant as long as such easement is within a Circulation Drive or within ten feet of a right-of-way line of Route 66 or 4th Street. Any such lines, conduits and systems required or requested to be placed above ground on another Owner's Parcel are subject to the prior approval of that Owner, such approval not to be unreasonably delayed or withheld with respect to transformers, utility cabinets or panels, and risers that do not materially obstruct access or visibility or reduce the parking spaces on such Owner's Parcel. Each Owner shall at the request of Declarant execute, acknowledge and deliver in recordable

form acceptable to Declarant a specific easement in favor of Declarant, the Manager, any Owner or other Person designated by Declarant who is served by the easement, and/or any relevant utility provider or government or quasi-governmental authority.

(ii) From time to time the Owner of a Parcel may relocate on its Parcel any utility line or facility installed pursuant to an easement granted in this Section 2.1(d) and located on such Owner's Parcel, *provided that* such relocation: (1) may be performed only after the Owner proposing such relocation gives at least 30 days' prior Notice to the Owner of each Parcel served by the line or facility; (2) may not unreasonably interfere with or diminish service to any Parcels served by the line or facility; (3) may not reduce or unreasonably impair the usefulness or function of the utility line or facility; (4) must be performed without cost to the Owner of any other Parcel; (5) must be performed with due diligence so as to minimize any disruption; and (6) must include restoration of the surface of all affected areas to a condition equal to or better than the condition that existed prior to such relocation. The Owner performing such relocation shall provide within 30 days following the completion of such relocation as-built plans for such relocated lines and facilities to all Owners of Parcels served by such lines and facilities. Upon completion of such relocation, any specific easement Recorded under this Section 2.1(d) shall be amended by the necessary parties to conform to the relocated lines and facilities.

(iii) Except in an emergency, the right of Declarant, the Manager or any Owner to enter on another Owner's Parcel pursuant to any easement granted in this Section 2.1(d), or of any Owner to prosecute work on such Owner's own Parcel if the work interferes with easements to or in favor of another Owner's Parcel, may be undertaken only after giving the Owner of the adversely affected Parcel at least 30 days' prior Notice of the scope, nature and duration of the work and the area in which the work is to be performed, and obtaining the approval of the Owner of the adversely affected Parcel to the work; *provided that* Declarant or the Manager, acting reasonably, is exempted from giving Notice to or obtaining consent from another Owner. The Owner of the adversely affected Parcel may not withhold or delay such approval if reasonable arrangements are made to perform work required in a manner and at times calculated to cause minimal disruption to the use and occupancy of that Parcel, and no direct monetary obligation is imposed on that Owner. The Owner undertaking such work shall repair with due diligence at its own cost any damage caused by such work and restore the affected portion of the Parcel where the work was performed to a condition equal to or better than the condition prior to such work. All such work must be performed in a good and workmanlike manner, free and clear of liens. Except as may be otherwise provided herein, the Owner undertaking such work shall pay all costs associated therewith and indemnify, defend and hold harmless Declarant, the Manager, all other Owners and their respective Permittees for, from and against all damages, losses, liens or claims (including reasonable attorneys' fees and costs) attributable to the performance of such work.

(iv) In addition to the foregoing provisions of this Section 2.1(d), each Owner shall cooperate in the granting of appropriate easements within the Common Areas of such Owner's Parcel to any government or quasi-governmental entity or utility company for underground utilities to serve other portions of the Development.

(e) Easements in favor of Owners for footings, screen walls, retaining walls, curbing, and light pole bases or standards which encroach no more than one foot into, on or under the Common Areas of other Owners' Parcels, excluding Circulation Drives; *provided* that the Owner

of a Parcel on which an Improvement encroaches but for this easement may require by prompt Notice to the encroaching Owner that in case of damage, destruction, demolition, exterior renovation or remodeling, or other removal of any significant portion of the encroaching Improvement, that Improvement must be removed in its entirety from the notifying Owner's Parcel at the encroaching Owner's expense.

(f) An easement in favor of Owners for the construction, use, operation, maintenance, removal and replacement of landscape planters, light poles, bases and standards, curbing, sidewalks and drive aisles that encroach into, on or under Common Areas of an adjoining Parcel, excluding Circulation Drives, in locations approved by Declarant, subject to approval by the Owner of the burdened Parcel as to the location of the easement, which approval may not be unreasonably delayed or withheld as long as the location does not unreasonably impair the use and enjoyment of the Common Areas of the burdened Parcel or adversely affect the business thereon.

(g) A temporary easement in favor of Declarant, the Manager and Owners on, over, under, above and across the Common Areas of the Parcels to construct, maintain, repair, or reconstruct with due diligence Improvements on other Parcels that may most advantageously be constructed, maintained, repaired or reconstructed from Parcels of other Owners, including construction and installation of Improvements, subject to the approval of the Owner of each burdened Parcel as to the nature, extent and duration of any proposed use of the easement, which approval may not be unreasonably delayed or withheld as long as the use of the easement does not unreasonably impair the use, enjoyment and operation of the Common Areas of the burdened Parcel or the conduct of business thereon; *provided that* an Owner may withhold approval of the use of developed portions of its Parcel for construction staging or parking of construction vehicles. Without limiting the foregoing, this easement is also for the maintenance, repair and service of any of the Common Areas that the Manager or any Owner is obligated or permitted to perform, subject to the provisions hereof. Use of this easement shall be minimized to the extent reasonably practicable.

(h) An easement in favor of Declarant, the Manager and Owners to enter on a Parcel pursuant to the self-help provisions of Section 12.2 to perform an obligation the Owner of the Parcel is required to perform under this Agreement but fails to perform within the applicable time period provided in Section 12.2.

(i) An easement in favor of Declarant and the Manager on, over, under, above and across the Common Areas of a Parcel on which a Shared Sign is located or permitted, for the construction, use, operation, lighting, maintenance, removal and replacement of the Shared Sign, including related utilities, and in favor of each Owner permitted by Declarant to place sign panels thereon for the maintenance, removal and replacement of such panels as provided in Article 9.

(j) Easements in favor of Declarant, the Manager and Owners on, over, under, above and across the Common Areas for the diversion of storm water runoff consistent with drainage plans approved by Declarant. Except as otherwise provided in Sections 2.1(k) and 2.1(l), any retention or detention of runoff from one Parcel onto another is permitted only with the prior consent of the Owner of the burdened Parcel.

(k) An easement in favor of Declarant and the Manager and, on Declarant's approval of drainage plans under Article 4, the Owners of Parcels served by the facilities that are the subject of such plans, on, over, under, through, above and across the Drainage Pipe and Common Areas to convey on the surface or within storm drain pipes storm water runoff for which the Development is responsible, whether arising on- or off-site, including runoff from the Circulation Drives and adjacent public rights-of-way, with the right to construct, operate, maintain, repair, remove and replace pipes, mains, slopes and swales approved by Declarant, and reasonable rights of ingress and egress with respect thereto. Each Owner agrees at the request of Declarant to execute, acknowledge and deliver in form acceptable to Declarant an easement in favor of Declarant, the Manager and any Owner designated by Declarant served by the easement, as to specific improvements installed pursuant to the easement. Following completion of initial construction of improvements to the Drainage Pipe on a Parcel, no change to such Drainage Pipe that adversely affects another Parcel may be made without the consent of the Owner of the affected Parcel, not to be unreasonably withheld or delayed as long as comparable replacement Improvements are provided.

(l) A temporary easement in favor of each Owner of a Parcel on, over, under, above and across the Common Areas of an undeveloped adjacent Parcel in a location and consistent with plans approved by Declarant, for the installation, use, operation, maintenance, repair, removal and replacement of a temporary storm water retention basin constructed on the adjacent Parcel. As a condition to an Owner's right to use this easement, the Owner's Parcel must be so designed as to have sufficient storm water retention capacity within the boundaries of the Owner's Parcel to accommodate all storm water applicable to the Owner's Parcel, without any additional capacity of the retention basin extension permitted by this easement unless the Owner of the adjacent Parcel agrees otherwise pursuant to Section 2.1(j). At any time following commencement of development of the adjacent Parcel, its Owner may terminate this easement in whole or part by modifying or removing any of the retention basin extension constructed on such adjacent Owner's Parcel.

(m) An easement in favor of Declarant, the Manager and Owners served by the easement in a specific instance as Declarant may designate, under the Circulation Drives and on, over, under, above and across portions of the Common Areas which are within ten feet of the Circulation Drives, and within any landscaped areas along public right-of-way frontage of the Development, to install, use, operate, maintain, repair, remove and replace in locations originally approved by Declarant: (i) the Circulation Drive Lights and associated utilities, for illumination of Circulation Drives; (ii) electrical panels and transformers, utility meters, landscape sprinkler controls and similar facilities determined to be necessary or desirable by Declarant to serve any of the Development; and (iii) Private Water and Sewer Mains.

(n) Easements in favor of Declarant, the Manager and any Owners responsible for initial construction and installation of Common Elements in a specific instance as Declarant may designate on, over, under, above and across the Common Areas and exterior portions of the Development on or adjacent to the Circulation Drives, of Circulation Drive Lights, Private Water and Sewer Mains, Permanent Landscaping, the Drainage Pipe, and Shared Signs for the initial construction and installation thereof and the operation, illumination, maintenance, repair, replacement, reconstruction or removal thereof in accordance with Article 6.

2.2 Use of Easements.

(a) Each Owner and its Permittees may only use the easements granted in or pursuant to Section 2.1 so as not to unreasonably interfere with the conduct and operations of the business of any other Owner or its Permittees on its Parcel, including access to and from said business and the receipt or delivery of merchandise. Each Owner undertaking work on a Parcel of another Owner pursuant to an easement shall with due diligence repair in a good and workmanlike manner at its own cost any damage caused by such work and restore any affected portion of the Parcel on which such work is performed to a condition equal to or better than the condition that existed prior to such work.

(b) The easements granted in or pursuant to Section 2.1: (i) are nonexclusive, and each Owner may use and occupy Common Areas of such Owner's Parcel for any use or purpose not inconsistent with such easements and this Agreement or any Supplement; and (ii) are subject to the applicable indemnity and liability insurance provisions of Article 8.

2.3 Easements Perpetual. Except as otherwise provided herein, all easements granted in this Agreement are perpetual in duration.

2.4 Implied Easements. Nothing in this Agreement creates any implied easements not expressly granted herein or pursuant hereto.

ARTICLE 3 - COMMON AREAS

3.1 Use and Configuration. Common Areas may only be used for ingress, egress and vehicular and pedestrian access and circulation among the Parcels and adjacent public rights-of-way, vehicular parking, loading and unloading of commercial and other vehicles and servicing and supplying of businesses in the Development, the comfort and convenience of Owners and their Permittees, and any other uses expressly permitted by this Agreement or in Supplements or required by any government authority with jurisdiction over the Development. Except as otherwise provided in this Agreement or in Supplements, the size, configuration and arrangement of the Common Areas and all Improvements and facilities constructed thereon, including and with Circulation Drives, Circulation Drive Lights, the FUTS, parking areas and spaces, patterns of traffic flow, entrances and exits, City-mandated pedestrian plazas or public seating, and location of trash enclosures, are subject to the prior approval of Declarant as to the initial construction or any rearrangement or remodeling thereof.

3.2 Obstructions. Except as otherwise shown on the Site Plan or approved by Declarant as to the initial construction or any rearrangement or remodeling thereof, no bumper guard, curb, lighting standard, landscape planter, sidewalk, fence, wall, rail, division or other permanent improvement that could constitute a barrier may be constructed or placed by an Owner in the Common Area of its Parcel or along any common boundary lines thereof, if it interferes with the Circulation Drives or otherwise materially adversely affects the parking configuration, vehicular and pedestrian circulation, or access in and through the Common Areas of the Development. Temporary structures and barricades may be installed in connection with construction of permanent Improvements or the maintenance or repair of Circulation Drives, subject to the prior consent of Declarant which may not be unreasonably delayed or withheld *provided that* such structures and barricades do not unreasonably interfere with the use of the

Common Areas or interfere with, obstruct or delay the conduct of the business of any Owner or its Permittees on its Parcel. Temporary barricades and structures must be maintained in a safe, neat and clean condition by the Owner installing them.

3.3 Possession. Declarant, the Manager, Owners and their Permittees may jointly use and enjoy the Common Areas under and subject to this Agreement. Declarant may from time to time remove, exclude or restrain by appropriate means any Person who is using or occupying the Common Areas in a manner contrary to this Agreement or applicable law, as determined in good faith by Declarant. If unauthorized use is by an Owner or its Permittees, such Owner shall immediately cease and cause its Permittees to cease such use upon Notice from Declarant. Declarant also reserves the right to restrict access to Common Areas not intended for use by Owners and their Permittees, including washes and natural open spaces.

3.4 Parking.

(a) Motor vehicles of Owners and Permittees must be parked in Common Areas in parking spaces and within lines and stripes intended for parking purposes. Except as required by applicable government authority, no charge or other validation for parking in the Common Areas may be made unless agreed by all Owners and permitted by law. No parking facility in the Common Area of a Parcel may be designated as reserved by its Owner without the prior consent of Declarant, excluding parking reserved for the handicapped, and up to 10% of parking spaces on a Parcel designated by its Owner for carpool, electric vehicle, time-restricted, customer loading, carry-out/pick-up, pregnant women, elderly or similar special privilege parking or uses, all subject to and as may be required and/or restricted by applicable law. This Section 3.4(a) does not prohibit valet parking conducted by an Owner solely on its own Parcel, *provided that* the prior consent of Declarant is obtained.

(b) As provided in Section 2.1(c), each Owner shall use reasonable efforts to restrict to its Parcel parking by employees of such Owner and its Permittees. Notwithstanding the foregoing, specific area(s) within the Common Areas of the Development to be used for parking by employees of Owners and their Permittees ("Employee Parking") may be designated from time to time by Declarant while it is an Owner and thereafter by unanimous consent of all Owners. If Employee Parking is so designated, employees of Owners and their Permittees must use only those portions of the Common Areas designated for Employee Parking purposes.

(c) The authority granted in this Section 3.4 to any Owner to designate reserved parking, with the consent of Declarant if required under Section 3.4(a), and of Declarant or all Owners to designate Employee Parking, may not be exercised to discriminate against any Owner or business in the Development.

(d) Overnight parking of semi-trucks or trailers in the Development without Declarant's prior consent is prohibited.

3.5 Waste or Nuisance. No rubbish or debris of any kind may be placed or permitted to accumulate on the Development for any unreasonable time, and no obnoxious or offensive odor is permitted to arise from the Development. No nuisance is permitted in the Development. Without limiting the foregoing, no horn, whistle, bell, speaker, sound system or other exterior sound device may be located, used or placed on, or audible from, exterior portions of the

Development other than: (a) those used to broadcast music commonly used in the operation of an Owner's business (*e.g.,* Muzak or similar commercial music service), *provided that* such music is not played in a loud or offensive manner or in a manner that adversely affects the business of another Owner or its Permittees as reasonably determined by such other Owner; (b) security devices or fire alarms used only for such purposes; (c) exterior speakers and sound systems for outdoor dining areas and drive-up or drive-through facilities; (d) exterior bells, paging or sound systems normal and customary for an educational facility; or (e) other exterior sound systems or devices expressly permitted by Supplements.

3.6 Rules and Regulations. Declarant may from time to time by Notice to all Owners establish and thereafter supplement or modify nondiscriminatory rules and regulations for the Common Areas, which must be complied with by all Owners and Permittees, and which may include the temporary closure of portions of the Common Areas as may be legally necessary, in the opinion of Declarant or its counsel, to prevent a dedication of any Common Areas or accrual of any prescriptive rights therein to any Person or the public, but may not otherwise adversely affect parking, ingress or egress. Declarant is also granted the right during the prosecution of construction on a Parcel to require that the Owner and its contractors restrict materials and equipment storage, construction-related deliveries, and construction traffic and parking to times and areas designated by Declarant.

3.7 Commercial Use Restricted. Except as permitted by Supplements or with Declarant's prior consent, no sale, lease or display of merchandise may be made, conducted or permitted in the Common Areas or otherwise outside the exterior walls of any Building, no such area may be used for other commercial purposes except as may be specifically permitted by this Agreement, and no traveling carnivals, fairs, rides, auctions, shows, performances, kiosks, booths or lots for the sale of fireworks or Christmas trees, sales by transient merchants from vehicles or booths, fund-raisers or other charitable events are permitted in the Common Areas. No Owner may cause, permit or undertake any posting of advertisements on vehicles or Buildings other than advertisements placed by an Owner or its Permittees on the Buildings located on its Parcel related to the business conducted thereon and in compliance with this Agreement and applicable law. No political demonstration or rally, promotions outside of Buildings, sidewalk sales or similar activities are permitted in the Development without the prior consent of Declarant. Shopping carts may only be stored in Common Areas within locations, and no exterior overnight storage of shopping carts is permitted except within corrals, approved by Declarant and the City.

3.8 Vending Machines. Except as may be permitted by Supplements, no vending machines, ATM/banking facilities or other retail fixtures or equipment of any kind may be located in the Common Areas or on any sidewalk in the Development (whether a part of a Building Envelope or Common Area), without the prior consent of Declarant.

ARTICLE 4 - DEVELOPMENT CONTROL

4.1 Building Envelopes. Buildings may only be constructed or placed on Parcels within Building Envelopes. Construction within Building Envelopes must conform to this Agreement and applicable law. This Section 4.1 does not prohibit construction by an Owner within a Building Envelope of Improvements normally found in Common Areas, in which case such areas will be Common Areas for purposes of this Agreement as long as such Improvements are located therein. Canopies, canopy support columns and associated subsurface installations

may encroach from the Building Area of a Parcel into the Common Areas of the Parcel (as long as the normal use of the Common Areas is not impaired), in which case such Improvements will be part of the Buildings to which they are attached and not the Common Areas.

4.2 Coverage and Height. Notwithstanding the size of any Building Envelope indicated on the Site Plan, the total square footage of floor area and maximum height (measured from finished floor level) of all Buildings constructed within that Building Envelope may not exceed any maximum limitations shown on the Site Plan or otherwise set forth in this Agreement or in Supplements. Subsurface installations on a Parcel for a tire or automotive service or repair facility are excluded from the calculation of Building Area of the Parcel.

4.3 Review and Approval of Plans. To achieve and maintain a harmonious and uniform quality of development within the Development, Declarant reserves the right to review and approve construction and development plans in advance of construction on any Parcel.

4.4 Preliminary Plans. Prior to construction or placement of any Building or other Improvement on a Parcel, including exterior alterations or additions to existing Buildings or reconstruction following casualty, the Owner shall submit to Declarant for approval, prior to or concurrently with a similar submission to the City, preliminary plans for proposed Improvements to such Owner's Parcel, including two full sets of the following: (a) a site plan (including the Building footprint, parking, exterior lighting and other proposed Improvements in Common Areas); (b) a grading and drainage plan; (c) Building elevations, including a color and material sample board and a colored rendering of all sides of all Buildings; (d) landscape plans; and (e) a signage plan. The foregoing are "Preliminary Plans." If required by Declarant, submission of Preliminary Plans must be accompanied by a $1,500.00 architectural review and processing fee to defray the cost of review. Preliminary Plans for Improvements must at a minimum conform to the requirements of this Agreement and any Supplement and Design Guidelines, but Declarant reserves the right to impose design standards in addition to or that vary from any Design Guidelines. Improvements constructed on the Parcels must be of first-quality construction and architecturally designed so the exterior elevations of Buildings (including color, materials, texture and signage) and Common Area Improvements are architecturally compatible and harmonious with other Improvements constructed or to be constructed in the Development, as determined by Declarant in its sole discretion.

4.5 Final Plans. If, within 30 days following Declarant's receipt from an Owner of a submission of Preliminary Plans pursuant to Section 4.4, Declarant does not object to or make a proposal that would add to or modify the Preliminary Plans, the submitting Owner shall give Notice to Declarant making reference to this Section 4.5 and advising Declarant that Declarant's failure to respond within an additional ten days will result in the Preliminary Plans being approved by Declarant. If Declarant does not object to or make a proposal that would add to or modify the Preliminary Plans within such additional ten day period, the Preliminary Plans will be approved for further development, provided they otherwise comply with this Agreement and any Supplement and the Design Guidelines ("Approved Preliminary Plans"). If Declarant timely objects to or make a proposal that would add to or modify the Preliminary Plans, the submitting Owner shall modify the Preliminary Plans accordingly and resubmit them until they are approved. Two sets of final working drawings, plans and specifications ("Final Plans") must be completed and submitted to Declarant prior to commencement of construction and conform to the Approved Preliminary Plans. Final Plans are subject to Declarant's review and approval on

the same basis as set forth in this Section 4.5 with respect to Preliminary Plans. Final Plans as approved are "Approved Final Plans." In no event will Declarant's approval of any drawings, plans, specifications, calculations or work constitute an implication, representation or certification of any kind by Declarant that said items are in compliance with any law, and Declarant is not liable for any defect in any Improvement constructed in accordance therewith, whether or not in accordance with Approved Final Plans. The Owner assumes all risk and responsibility with respect to the plans and other drawings and specifications submitted to Declarant and shall indemnify, defend and hold harmless Declarant for, from and against any and all losses, claims, damages, obligations or liabilities (including attorneys' fees and costs) arising therefrom or related thereto.

4.6 No Alterations. Once there are Approved Final Plans for Improvements on a Parcel, such Improvements must be constructed in accordance therewith and any further modification requires the approval of Declarant; *provided that* the foregoing does not require approval of Minor Modifications. "Minor Modifications" are modifications to Approved Final Plans that do not: (a) affect the exterior appearance of the Improvements; (b) result in an increase or decrease in construction cost of more than $25,000.00; (c) result in Approved Final Plans as modified no longer being in substantial conformance with the Final Plans originally approved by Declarant; and (d) result in the Approved Final Plans as modified not being in conformance with the Design Guidelines. Once constructed, any alteration, addition, repainting, remodeling or reconstruction to or of any existing Building that changes the exterior appearance thereof, and any material alteration of Common Areas including the layout of driveways or parking spaces, requires the prior consent of Declarant. No changes to Circulation Drives or Circulation Drive Lights as originally designated by Declarant and constructed on any Parcel not then owned by Declarant may be made without the consent of those Persons necessary to effect an amendment of this Agreement under Article 17.

4.7 Sprinklers/Fire Rating. Unless otherwise approved by Declarant, each Building must be either: (a) equipped with automatic sprinkler systems meeting all requirements of the Fire Insurance Rating Authority or similar organization having jurisdiction; or (b) constructed, maintained and used so as to be fire-rated as a separate and distinct unit from every other Building in the Development.

4.8 Party Walls. No party walls (in which Owners of Buildings share a common wall along a common boundary of their Parcels) are permitted except with the consent of Declarant and the Owners of the affected Parcels. Agreements between Owners regarding party walls may be contained in Supplements.

4.9 City Review. Compliance with this Article 4 is in addition to, and not in lieu of, compliance with the requirements of the City, including any site plan or design review process, which are the responsibility of each Owner. If any requirements of the City conflict with those of this Agreement, the more restrictive requirements are controlling.

4.10 Common Elements Plans. Notwithstanding any conflicting provision in this Agreement, Declarant reserves the right by Notice to an Owner at any time and from time to time prior to the commencement of construction of any Building on such Owner's Parcel, to require the Owner to construct at such Owner's cost Permanent Landscaping and/or "Protected Drives" including associated curbs, gutters and related Improvements designated by Declarant and on or

adjacent to such Owner's Parcel ("Common Elements"). With reasonable diligence and in any event within 60 days following such Notice, the Owner shall cause to be prepared and submitted to Declarant for approval plans and specifications for those Common Elements, including to the extent relevant paving sections, curbs, a striping plan, grading and drainage plans, landscaping plans, lighting specifications and the like, to the extent applicable ("Common Elements Plans"). The Common Elements Plans must conform to the Design Guidelines and any other paving section, curb, striping, drainage, landscaping, lighting and other specifications established by Declarant or the City at the time such plans are submitted for approval. As long as all timetables for completion of construction in Article 5 are met, Common Elements Plans may be submitted as a part of Preliminary Plans under Section 4.4 or separately but subject to approval in the same manner as Preliminary Plans are approved under Section 4.5. Once completed all or any part of a Protected Drive may be relocated only with the prior consent of Declarant and the Owners of the Parcels which reasonably utilize such Protected Drive. The requirements of this Section 4.10 are separate from and in addition to any other requirements in this Agreement.

ARTICLE 5 - PARCEL CONSTRUCTION

5.1 Initial Construction of Buildings. Except as otherwise provided in Section 5.2 or agreed by Declarant, once construction is commenced of any Building and other Improvements on a Parcel, the Owner of the Parcel shall construct or cause to be constructed such Building and other Improvements with reasonable diligence, at such Owner's sole cost, in a good and workmanlike manner, in accordance with Approved Final Plans and free and clear of any mechanics lien or similar encumbrance. Such construction shall not unreasonably interfere with use of any Common Areas by any other Owner or Permittee. All such construction must be completed within twelve months following commencement, unless otherwise agreed by Declarant.

5.2 Initial Construction of Common Elements.

(a) Following approval by Declarant of any Common Elements Plans, the Owner obligated to prepare such plans shall construct or cause to be constructed the Common Elements designated by Declarant with reasonable diligence, at such Owner's sole cost, in a good and workmanlike manner, in accordance with approved Common Elements Plans, and free and clear of any liens or encumbrances. All such construction must be completed within four months following approval by Declarant of the Common Elements Plans, unless otherwise agreed by Declarant.

(b) If required by Declarant to obtain economies of scale and/or consistency of design and construction, and to the extent construction timetables may be reasonably coordinated, an Owner obligated to construct Common Elements shall cooperate with any adjoining Owner (including Declarant) also constructing Common Elements (such as where each Owner is constructing part of a Protected Drive) to use a contractor acceptable to Declarant to concurrently construct portions of Common Elements on their respective Parcels, and to pay such contractor in proportion to the Common Elements on each Parcel.

5.3 Right of Declarant to Complete.

(a) If an Owner fails to complete construction of Buildings and other Improvements within the time required by Section 5.1, then on 30 days' Notice to such Owner, Declarant may at its option enter on such Owner's Parcel and cause the completion of any such construction in accordance with Approved Final Plans, at such Owner's sole cost.

(b) If an Owner fails to complete construction of Common Elements for which it is obligated within the time required by Section 5.2, then on ten days' Notice to such Owner, Declarant may at its option enter on such Owner's Parcel and cause the completion of any such construction in accordance with approved Common Elements Plans (or in the absence thereof, such plans and specifications as Declarant approves) at such Owner's sole cost.

5.4 Initial Construction of Common Areas. Notwithstanding the foregoing provisions of this Agreement, to achieve architectural harmony, uniformity of appearance and coordination of the initial construction of improvements to Common Areas in connection with the initial construction of any Buildings and other Improvements (including Common Elements) on a Parcel by an Owner, Declarant may undertake the responsibility for the construction of any Common Area Improvements for the Parcel on such terms as Declarant and such Owner mutually agree.

5.5 General Provisions Regarding Construction. All construction, alteration or repair work by an Owner must be accomplished expeditiously, in accordance with law, and in a good and workmanlike manner using first-class materials, free and clear of any mechanics lien or similar encumbrance. Construction work shall be accomplished so as to minimize any damage or adverse effect caused by such work to any other Owner or its Permittees.

5.6 Covenant to Maintain.

(a) Each Owner shall, at its cost, maintain all unimproved portions of such Owner's Parcel in a clean and neat condition, control grass, weeds, blowing dust, dirt, sand, litter and debris, and maintain such portions in compliance with applicable law.

(b) Subject only to Section 6.1, each Owner shall operate, maintain, repair and replace, at its sole cost, all Improvements, Common Areas and Owner-Maintained Wash Area on its Parcel, in good order, condition and repair, in a manner consistent with first-class retail developments in metropolitan Flagstaff, Arizona. Those Owner's obligations include, with respect to Improvements in the Common Areas of such Owner's Parcel: (i) maintaining, repairing and keeping illuminated lighting as provided in Section 5.6(c), including Circulation Drive Lights; (ii) maintaining, repairing and replacing parking lots, drive lanes, drive-up or drive-through facilities, and other paved areas (by replacement of base, skin patch, sealing, resealing, resurfacing, restriping and replacement, as applicable), curbs, gutters and sidewalks, storm drains, sewers and other utility lines and facilities not dedicated to the public, landscaping (including Permanent Landscaping), signage (including directional, stop and handicapped parking signs), sidewalks and planters contiguous to Buildings, retaining walls, Drainage Pipe, any City-mandated pedestrian plaza or public seating and the FUTS; (iii) keeping clearly marked fire lanes, loading zones and pedestrian crosswalks; and (iv) removing all papers, debris, filth and refuse and sweeping Common Areas as reasonably necessary to keep them in a clean and orderly

condition. For purposes hereof, the Common Areas of a Parcel include any neighboring property or Improvements contiguous to the Parcel or in the public rights-of-way adjacent to the Parcel that are required by any government authority to be maintained by the Owner of the Parcel. Each Owner shall also, at its sole cost and subject to Section 2.2, construct, operate, maintain, repair and replace in good order and condition, all private utility lines, systems and facilities, including Private Water and Sewer Mains, serving the Parcel of such Owner but located on the Parcel of another Owner.

(c) Circulation Drive Lights on a Parcel may initially be connected to a "house panel" for the benefit of the Development, in which event associated utility charges will be assessed among all Owners under Article 6. Except as otherwise provided in this Agreement or in Supplements, as each Parcel is developed its Owner shall at its cost promptly cause any Circulation Drive Lights on its Parcel to be appropriately recircuited, or if not then existing to be originally constructed, as necessary to connect the Circulation Drive Lights to metering on such Owner's Parcel, after which the associated utility charges will be the obligation of such Owner. Circulation Drive Lights must be illuminated during nighttime hours until 11:00 p.m. or such later or earlier times as the City requires; *provided that,* at the request of one or more Owners all or portions of the Circulation Drive Lights may be illuminated beyond such normal hours subject to payment by any Owners requesting such after-hours lighting of the additional utility charges associated therewith. All other lighting in the Common Areas must be illuminated during such hours as Declarant requires in rules and regulations established under Section 3.6. Subject to the foregoing, exterior lighting on a Parcel (including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers) shall be maintained, repaired and illuminated by the Owner of the Parcel as required herein and separately metered to the Parcel, and the Owner of the Parcel shall cause to be supplied and timely pay all utility charges relating thereto.

(d) Landscaping sprinkler and irrigation systems in the Development relating to Permanent Landscaping may initially be connected to an irrigation system, including associated water timers and meters, operated and maintained by the Manager for the benefit of the Development, in which case the costs thereof, including associated utility charges, will be assessed among all Owners under Article 6. Except as otherwise provided in this Agreement or in Supplements, as each Parcel is developed the Owner thereof shall at its cost promptly cause any such sprinkler and irrigation systems relating to Permanent Landscaping on or immediately adjacent to its Parcel to be appropriately reconnected and/or recircuited, or if not then existing, to be originally constructed, as necessary to connect such systems to water timers and meters on such Owner's Parcel, after which the associated utility charges will be the obligation of such Owner. Subject to the foregoing, landscaping sprinkler and irrigation systems on a Parcel must be separately metered to the Parcel and the Owner of the Parcel shall maintain and repair such systems and cause power to be supplied and pay utility charges relating thereto.

(e) Each Owner shall regularly inspect any Improvements on its Parcel for the presence of graffiti and promptly, and in any event not later than two business days after Notice from Declarant or the City, remove any graffiti from its Improvements. If an Owner fails to remove graffiti from its Improvements within such two day period, and such failure is not cured within two business days after a second Notice from the Declarant or the City, Declarant may at its option remove such graffiti at the expense and for the account of such Owner.

(f) If a business operated on a Parcel involves a restaurant or other food service operation, the Owner of the Parcel must cause to be installed and periodically inspected and cleaned (not less often than once every six months) grease traps as reasonably necessary to accommodate the requirements of the business and prevent the emanation of noxious odors from the Parcel. That Owner shall promptly on request furnish Declarant copies of reports and invoices evidencing such periodic inspection and cleaning.

(g) If an Owner fails to perform any reconnection or recircuiting of Circulation Drive Lights or landscaping sprinkler and irrigation systems relating to Permanent Landscaping, or any operation, maintenance, repair, replacement or illumination of any Improvements or Common Areas, for which such Owner is responsible, Declarant may at its option give the Owner Notice of such failure. If such Owner fails to commence the required performance within 20 days from the date of such Notice or thereafter fails to diligently prosecute such performance to completion, or if such Owner fails to complete the required performance within 30 days from the date of the Notice (*provided that,* if the nature of the performance is such that it cannot reasonably be completed within 30 days, *and further provided that* the Owner has commenced within such 30-day period the performance and diligently pursues such performance to completion without interruption, then such Owner will have a reasonable time within which to complete such performance), Declarant may at its option enter the Parcel during reasonable hours and perform such reconnection, recircuiting, operation, maintenance, repair, replacement or illumination at such Owner's sole cost. Notwithstanding the foregoing, if such Owner's failure to maintain Improvements presents an immediate risk of damage to property, injury to persons, or loss or obstruction of access, the Notice requirements of this Section 5.6(g) will not apply and Declarant may at its option take immediate steps to minimize or eliminate such risk at the cost of such Owner. In such case, Notice of such action will be given to such Owner as soon as reasonably practicable.

5.7 Trash Facilities. Each Owner shall construct within the Common Areas of its Parcel trash facilities and receptacles ("Trash Facilities") for the exclusive use and benefit of the Parcel and containment of garbage, trash and rubbish generated by the business conducted on the Parcel. The location of the Trash Facilities on each Parcel must be approved by Declarant, situated so as to comply with any applicable laws, and not obstruct or unreasonably interfere with the use and enjoyment of any neighboring Parcels. In no event may the concrete apron of any Trash Facilities be located in a Circulation Drive unless approved by Declarant. All Trash Facilities must be completely screened with a masonry screen wall (or other material) approved by Declarant pursuant to Article 4. Each Owner is responsible for periodically emptying (not less often than weekly), and all maintenance and clean-up of, such Owner's Trash Facilities, and paying all costs for refuse service. Trash Facilities must be maintained in a safe, clean and operating condition at all times, and all rubbish, trash and garbage must be regularly removed and not be allowed to accumulate. All rubbish, trash and garbage must be kept in rodent-proof containers. Rubbish, trash and garbage that emits odor must be kept in air-tight containers. If an Owner defaults in its use or operation of its Trash Facilities, Declarant may at its option with ten days' prior Notice take such steps as are appropriate to properly maintain such Trash Facilities at the sole cost of that Owner.

5.8 Damage or Destruction of Buildings. If all or a portion of a Building on a Parcel is damaged or destroyed, the Owner of the Parcel shall with due diligence and at its sole cost either: (a) repair, restore and rebuild such Building to its condition prior to such damage or

destruction, or with alterations or additions complying with Article 4; or (b) tear down and remove such Building and any related Improvements, including debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level and clean condition. If any Owner fails to repair, restore or rebuild the Building or tear down and remove the Building as set forth above, Declarant may at its option give the Owner Notice of such failure. If such Owner fails to commence the required performance within 30 days after such Notice or thereafter fails to diligently prosecute such performance to completion within twelve months after such Notice, Declarant may at its option enter on the Parcel during reasonable hours and perform such repair, restoration, rebuilding or removal at such Owner's sole cost.

5.9 Damage or Destruction of Common Areas. If any Improvements in the Common Areas of a Parcel are damaged or destroyed, the Owner of the Parcel shall with due diligence at its sole cost restore, repair and rebuild those Improvements substantially in accordance with the original plans therefor or with alterations or additions complying with Article 4. If any Owner fails to do so, Declarant may give the Owner Notice of such failure. If such Owner fails to commence the required performance within ten days after such Notice or thereafter fails to diligently prosecute such performance to completion within 30 days after such Notice (or such longer period not to exceed 90 days as is reasonably necessary to complete such performance), Declarant may at its option enter on the Parcel and perform such repair, restoration or rebuilding at such Owner's sole cost.

5.10 Reimbursement. Reasonable costs incurred by Declarant in connection with any reconnection, recircuiting, operation, maintenance, repair, replacement, restoration, rebuilding, removal or illumination on or of an Owner's Parcel undertaken by Declarant, and reasonable costs incurred by Declarant in connection with completion of construction pursuant to Section 5.3, following an Owner's failure of performance under Article 4 or this Article 5 (which failure is not cured within the time frames provided), plus an administrative fee for overhead and supervision equal to 20% of such costs, are due and payable by such Owner on demand of Declarant and are an assessment in favor of Declarant with respect to which Declarant has the rights and remedies in Article 7.

ARTICLE 6 - MANAGEMENT

6.1 Maintenance Obligations of Manager. Except as otherwise provided herein, the Manager, at the cost of Owners as provided in this Article 6, will perform or cause to be performed for the Development in a manner consistent with first-class neighborhood retail developments in metropolitan Flagstaff, Arizona, the following:

(a) Circulation Drives. Maintenance, cleaning, repair and replacement of the Circulation Drives.

(b) Circulation Drive Lights. Maintenance, cleaning, repair and replacement of Circulation Drive Lights that have not become the responsibility of Owners other than Declarant pursuant to Section 5.6(c).

(c) Permanent Landscaping. Maintenance and replacement of Permanent Landscaping, including related irrigation systems, that have not become the responsibility of Owners other than Declarant pursuant to Section 5.6(d).

(d) Wash Area. Reasonable and necessary periodic landscaping, maintenance, repair and replacement of the Wash Area (excluding any Owner-Maintained Wash Area), including cleaning and replacement of sediment filters in catch basins, if any.

(e) Snow Removal. Seasonal snow removal as reasonably required for paved portions of Common Areas and the FUTS.

(f) Shared Signs. Reasonable and necessary illumination and periodic maintenance, repair and replacement of Shared Signs, including utility lines and connections necessary to supply electrical current for their proper operation, with the right to reasonably prune landscaping in the vicinity of Shared Signs to assure visibility of sign panels installed thereon; *provided that* the fabrication, installation, repair and maintenance of the panels on Shared Signs are the responsibility of the Owners permitted to maintain such panels thereon as provided in Article 9.

(g) Off-site Areas. Payment of any fees and charges for and the maintenance, cleaning, repair, replacement, landscaping, irrigation and illumination of or relating to areas adjacent to or in the vicinity of the Development (but not Permanent Landscaping, or landscaping in the right-of-way immediately adjacent to a Parcel, for which Parcel Owners are responsible), to the extent such payment or maintenance is required by a government authority as a condition to the use and operation of any of the Development.

(h) Utilities. Payment of charges for electricity, water and other utilities used in connection with items maintained by the Manager pursuant to this Agreement.

6.2 Common Expenses. All reasonable costs incurred by the Manager for the benefit of the Development under this Agreement and not otherwise allocated specifically to one or more Owners, including under Sections 6.1 and 8.5, are "Common Expenses." Common Expenses also include reasonable and customary reserves, miscellaneous expenses for checks, bank charges, bookkeeping and accounting, reasonable legal fees, sales taxes, and similar administrative costs paid to third parties and directly related to duties performed by the Manager under this Article 6, plus a reasonable management fee (whether payable to the Manager and/or to a third party designated by the Manager) for supervision and overhead not exceeding 15% of the total such costs or such greater amount as is normally and customarily paid for similar services to third-party property managers of similar retail centers in the Flagstaff area. The Manager may hire companies affiliated with it to perform any duties hereunder, but only if the rates charged are competitive with those of other companies furnishing similar services in the Flagstaff area.

6.3 Assessments. Common Expenses are a continuing lien and assessment against the Parcels governed by Article 7, and will be assessed against each Owner and its Parcel in the same proportion as the gross square footage of land area (excluding the Wash Area) of such Owner's Parcel bears to the total gross square footage of land area (excluding the Wash Area) of all Parcels in the Development (excluding assessments for Shared Signs assessed under Section 9.2(a)). Notwithstanding the foregoing, Common Expenses (excluding assessments for Shared Signs on which an Owner has placed sign panels), may not be assessed against an Owner or its Parcel under this Section 6.3 until the earlier to occur of: (a) substantial completion of a Building on such Owner's Parcel, as conclusively evidenced by issuance of a temporary or

permanent certificate of occupancy; or (b) the expiration of six months after conveyance of the Parcel by Declarant to an unrelated Person; *provided that,* if Declarant reacquires a Parcel pursuant to the exercise of a repurchase option in a Supplement, no assessments for Common Expenses (except for Shared Signs on which Declarant has placed sign panels) may be made against the Parcel under this Section 6.3 until the condition in either clause (a) or (b) of this sentence is satisfied. In calculating assessments payable by Owners, the Manager may appropriately exclude the land area of any Owner excused from the payment of such assessments pursuant to the immediately preceding sentence. In addition, with respect to any particular component of such assessments, the Manager may also exclude the land area of any Parcel or portion thereof the Owner or Permittee of which, with the consent of the Manager, self-maintains with respect to such component, to assure that 100% of each assessment is allocated among the remaining Owners. Notwithstanding the foregoing, the Manager may, on such basis as the Manager reasonably determines to be equitable, allocate specific Common Expenses to specific Owners where such costs can be shown to: (a) be directly attributable to the acts or omissions of such Owners or their Permittees and would not otherwise have been incurred in the absence of such acts or omissions; or (b) principally benefit the Parcels of such Owners. Allocations of Common Expenses consistent with this Section 6.3 may be included in Supplements.

6.4 Payment Obligation. The Manager may, at its option but not more often than monthly, reasonably estimate the amount of each Owner's assessment next due and collect and impound in advance from each Owner the amount thereof, or collect in arrears from each Owner the actual amount of such Owner's assessment, as shown in a statement sent by the Manager to each Owner. Each Owner shall pay to the Manager the amount shown as due on such statement (such statement to show the total assessment and Manager's calculation of each Owner's share) within 30 days after such Owner's receipt thereof. If estimated impounds are collected, the Manager will within 90 days after the end of each calendar year provide each Owner with a statement setting forth a reconciliation of such Owner's impound account. If such statement discloses that the amount in any Owner's impound account is insufficient to satisfy such Owner's assessment under this Article 6 for the previous year, such Owner shall pay to the Manager the deficiency within 30 days after receipt of the statement. Any excess in an Owner's impound account that is not necessary in the Manager's judgment for reasonable and customary reserves will be returned to such Owner or applied against the next succeeding impounds hereunder.

6.5 Record Keeping/Dispute Resolution.

(a) The Manager will keep accurate books and records relating to the costs incurred by the Manager in performing its obligations under this Article 6, which will be available at the Manager's office for inspection and copying by any Owner at its expense during reasonable business hours. Any Owner may, within 90 days after receipt of any statement described in Section 6.4, dispute the amount or propriety of any item thereon by Notice to the Manager, and if such Owner and the Manager do not agree as to the item within 30 days thereafter, the dispute will be resolved by arbitration under Section 6.5(b). Failure by any Owner to notify the Manager of a dispute as to any item within such 90-day period will conclusively establish that the item is correct as shown on the statement and the Owner will have no further right to dispute such item. Notwithstanding dispute of any item, the Owner shall promptly pay to the Manager all amounts shown to be due in any statement, subject to reimbursement if the arbitration favors such Owner.

(b) If a dispute under Section 6.5(a) continues unresolved for 30 days, either the Manager or Owner may notify the other of its desire to arbitrate the dispute, in which event the dispute will be settled by arbitration pursuant to this Section 6.5(b). The arbitration will be conducted by one independent arbitrator with at least ten years' experience in the management of commercial properties. If the parties do not agree on an arbitrator, one will be appointed by the governing official of the local American Arbitration Association. The arbitration will be governed by the Rules of Commercial Arbitration of the American Arbitration Association then prevailing, subject to the limitations herein. Judgment upon the award rendered by the arbitrator may be entered in a court of competent jurisdiction. The arbitrator's decision must include findings of fact and be rendered within 60 days following a hearing. The arbitrator has no power to modify this Agreement, and his or her jurisdiction is limited accordingly. The arbitrator has the power to award interest on any disputed sum. Costs of the arbitration will be borne by the non-prevailing party, or if neither party is clearly the non-prevailing party, as apportioned by the arbitrator.

6.6 Delegation of Rights and Obligations. The Manager may at any time by Notice to the Owners assign and delegate its rights and obligations under this Article 6 (collectively "Property Management") to an Owner who accepts and assumes such rights and obligations in writing, or to a recognized and licensed property management company (a "Property Management Company"). The Manager will provide each Owner Notice of the delegation which sets forth the name and address of the Person to whom Property Management has been delegated, and a counterpart will be Recorded. The delegation will include any obligation to maintain insurance pursuant to Section 8.5, the obligation to maintain and illuminate Shared Signs pursuant to Section 9.2, and the right to exercise rights and remedies for delinquent assessments in Article 7. Upon delegation of Property Management to another Owner, the delegating Manager will be relieved of all rights and obligations relating to Property Management thereafter arising, and the Manager to whom Property Management has been delegated and transferred shall thereafter perform Property Management pursuant to this Agreement. Upon delegation and transfer of Property Management to a Property Management Company, the Manager will remain responsible for the performance of such obligations by the Property Management Company. If Declarant assigns all rights and obligations as Declarant to a successor under Article 14, the rights and obligations of Declarant's successor will include the rights and obligations of the Manager (to the extent not previously assigned). The Manager may resign and withdraw upon 90 days' Notice to all Owners. Any Manager (other than Evergreen) then serving may be removed, or a new Manager designated to fill a vacancy, by the Owners in the manner set forth in Section 14.2 for the designation or removal of Declarant's successor.

ARTICLE 7 - ASSESSMENTS

7.1 Covenant to Pay. Each Owner by acceptance of a deed (or otherwise acquiring title) to a Parcel (whether or not such obligation is specifically expressed therein) shall pay Declarant all sums due and owing to Declarant pursuant to this Agreement, and agrees to and shall pay to the Manager all sums due and owing to the Manager pursuant to this Agreement, which obligations are assessments for purposes hereof whether or not specifically so characterized elsewhere in this Agreement.

7.2 Continuing Lien. Each assessment established by this Agreement in favor of Declarant or the Manager, together with interest, costs and reasonable attorneys' fees, is and will

be a continuing lien on the Parcel against which, or against the Owner of which, such assessment is made, until paid, and will also be the personal obligation of the Owner of the Parcel at the time the assessment is made. No such personal obligation will pass to an Owner's successors in interest unless expressly assumed by them, but the Owner of the Parcel at the time the assessment is made will continue to be personally liable for such assessment.

7.3 Delinquent Assessment. Failure to pay an assessment within the period provided for such payment, which failure continues for ten days after Notice from Declarant or the Manager to the Owner, constitutes a default by the Owner of the Parcel to which the assessment relates. Declarant or the Manager is then authorized and empowered to proceed to collect such assessment, with interest at the rate of 16% per annum from the date such assessment is due until it is paid, and with costs and reasonable attorneys' fees. In addition to any other remedies permitted at law or in equity, Declarant or the Manager may enforce payment of the delinquent amount due against the Owner and/or its Parcel by taking either or both of the following actions, concurrently or separately (and exercise of either of those remedies will not prejudice its right to exercise the other remedy or any other right or remedy): (a) bring an action at law against the Owner personally obligated to pay the assessment or other sum of money; and/or (b) foreclose the lien against such Owner's Parcel under and subject to then-prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). In addition to any other remedies available at law or in equity, Declarant or the Manager may include in Common Expenses any delinquent assessment or other amount due from a defaulting Owner, together with costs of collection including attorney's fees and court costs, to be allocated among and paid by the non-defaulting Owners, subject to a *pro rata* reimbursement of any net amounts subsequently collected.

7.4 Liability for Assessments. No Owner may waive or otherwise escape liability for assessments provided for herein by nonuse or abandonment of its Parcel. The assessment lien provided for in this Article 7 is superior to all liens and encumbrances other than liens for *ad valorem* property taxes and any other public charges which by applicable law are expressly made superior. Sale or transfer of a Parcel does not affect the assessment lien provided in this Article 7.

7.5 Recordation. If any assessment or portion thereof becomes delinquent, a Notice of lien against the Parcel to which such assessment relates for the unpaid amount with interest and costs described above may be Recorded by Declarant or the Manager. The Notice will be signed and acknowledged by Declarant or the Manager and contain the following: (a) an itemized statement of amounts due and payable; (b) a description of the Parcel to which the Notice relates; (c) the name of the Owner or reputed Owner of the Parcel; and (d) the name and address of the Person causing the Notice to be Recorded. Such Notice is additional evidence of the assessment lien against the Parcel described in such Notice. Upon the curing of any default for which a Notice of lien was Recorded by Declarant or the Manager, a release of such Notice will be Recorded on payment by the defaulting Owner of a reasonable fee determined by Declarant or the Manager to cover the costs of preparing and recording such release with the payment of such other costs, including legal fees and court costs, interest or charges, as have accrued or Declarant or the Manager has incurred.

ARTICLE 8 - INDEMNIFICATION AND INSURANCE

8.1 Indemnification.

(a) Each Owner shall indemnify, defend and hold harmless Declarant, including Declarant's agents, employees, directors, members, managers and contractors, the Manager and all other Owners within the Development, and their respective Permittees, for, from and against any claims and all costs and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage to any Person or property of any Person, and caused by the acts or omissions of such Owner or its Permittees and occurring on such Owner's Parcel, except to the extent caused by the negligence or intentional misconduct of an indemnified party.

(b) Each Owner having rights with respect to an easement granted hereunder shall indemnify, defend and hold harmless Declarant, including Declarant's agents, employees, directors, members, managers and contractors, the Manager and the Owner whose Parcel is subject to the easement, for, from and against any claims and all costs and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage to any Person or property of any Person, and caused by the acts or omissions of the indemnifying Owner or its Permittees in the use of such easement, except to the extent caused by the negligence or intentional misconduct of the indemnified party whose Parcel is subject to the easement or its Permittees.

(c) Declarant, the Manager and their respective agents, employees, directors, officers, partners, members, managers or contractors are not liable to any Owner or such Owner's Permittees for, and shall be indemnified against any claims, costs and liabilities arising from, any mistake or error in judgment or for any other act or omission under this Agreement if it is not fraudulent, grossly negligent or in bad faith, and each Owner waives and relinquishes any claims against Declarant, the Manager and their respective agents, employees, directors, officers, partners, members, managers and contractors on account thereof.

8.2 Insurance by Owners. Each Owner shall provide and maintain, or cause its Permittees to provide and maintain, such policies of property insurance (written on a "Special Form" or equivalent basis) on Improvements located on such Owner's Parcel (in an amount not less than 80%, or such other percentage set forth in any relevant Supplement, of the full replacement value thereof), and commercial general liability insurance insuring against claims for personal injury, death or property damage (including contractual liability under Section 8.1), occurring on or about such Owner's Parcel and the easement areas subject to use and enjoyment by such Owner and its Permittees, with combined single limit coverage of not less than $5,000,000.00 (or such other amount set forth in any relevant Supplement) per occurrence, or such higher amount as the Manager may from time to time reasonably designate (without obligation to do so) based on coverage carried by reasonable and prudent owners of like property in metropolitan Flagstaff, Arizona. Each policy of commercial general liability insurance procured and maintained by an Owner or its Permittees must be primary and not contributing with any policy or policies of insurance maintained by Declarant, the Manager or any other Owner or its Permittees, and must name Declarant, any person designated in writing by

Declarant, the Manager (if other than Declarant) and all other Owners as additional insureds (using ISO Endorsement CG 20 26, or its equivalent), *provided that* the Owner obtaining such insurance has been supplied with the names of the other Owners in the event of a change therein. Any insurance required by this Agreement may be provided within a blanket or master policy of insurance, *provided that* such blanket or master policy contains a "per location aggregate" or organizational endorsement preventing coverages required by this Agreement from being reduced or diminished by reason of the use of such policy. All insurance must be issued by insurance companies authorized to do business in the State of Arizona rated with a Financial Strength Rating of not less than A- (Excellent) and a Financial Size Category of not less than IX by A. M. Best Company, written on an occurrence basis and include coverage for contractual liability and broad form property damage.

8.3 Self-Insurance. Any Owner (or Permittee of such Owner responsible for carrying insurance) having a tangible net worth calculated in accordance with generally accepted accounting principles consistently applied in excess of $250,000,000.00 and net current assets in excess of $50,000,000.00 may in a Notice to Declarant elect to self-insure. By self-insuring, an Owner (or Permittee of such Owner responsible for carrying insurance) shall have agreed to make payment in the event of loss at such times, in such amounts, and to such persons as would an insurance company authorized to do business in the State of Arizona having the minimum Financial Strength Rating and Financial Size Category described in Section 8.2, it being the intention in permitting self-insurance hereunder that such self-insurance be equivalent to the third-party insurance coverage otherwise required under this Article 8. In no event, however, may the scope of any self-insurance be greater than the scope of the third-party insurance coverage otherwise required under this Article 8. The election by an Owner (or Permittee of such Owner responsible for carrying insurance) to self-insure does not reduce or diminish the indemnification or waiver of subrogation to which any Owner would otherwise be entitled under this Agreement.

8.4 Evidence of Insurance. Upon the request of any Owner or Declarant or the Manager, an Owner shall furnish to the requesting party certificates of insurance and, with respect to the additional insured obligations referenced in this Article 8, a copy of ISO Endorsement CG 20 26 (or its equivalent), and other reasonable evidence indicating insurance meeting the requirements hereof has been obtained and is in effect. In case of self-insurance, reasonable evidence substantiating the tangible net worth and net current assets requirements in Section 8.3 above must be provided (*e.g.*, audited financial statements prepared by a reputable national accounting firm, but if such Owner or Permittee is publicly traded on a national securities exchange, substantiation of net worth need not be made, as such information is a matter of public record).

8.5 Insurance by Manager. The Manager shall maintain property insurance coverage (to the extent reasonably insurable) for all Wash Area being maintained by the Manager under Section 6.1 and for all Shared Signs (exclusive of sign panels). Such insurance must be written on a "Special Form" (or equivalent) basis and may include such endorsements and additional coverages as the Manager determines based on insurance coverages carried by reasonable and prudent owners of like property in metropolitan Flagstaff, Arizona. Such insurance shall be maintained by the Manager in at least 80% of the replacement value (to the extent reasonably insurable) thereof, with a deductible in such amount as the Manager reasonably determines. The proceeds of the property insurance maintained by the Manager payable in the event of a loss will

be payable to the Manager and used solely to restore, replace, reconstruct and rebuild the insured property to the condition existing immediately prior to the occurrence of the loss. The Manager must also procure and maintain commercial general liability insurance insuring against claims for personal injury, death or property damage, occurring on or about the Wash Area, with combined single limit coverage of not less than such amount as the Manager determines to be reasonable based on insurance coverage carried by reasonable and prudent owners of like property in metropolitan Flagstaff, Arizona. Such policy of liability insurance will name each Owner as an additional insured, provided that the Manager has been supplied with the name of an Owner in the event of a change therein, but will be secondary to and excess coverage in respect of any insurance maintained by an Owner under any other provision of this Article 8. The Manager will, on request from any Owner, furnish to the Owner evidence meeting the requirements of Section 8.4 as to the insurance maintained by the Manager under this Section 8.5. The costs incurred by the Manager in connection with the insurance described herein will be assessed against the Owners and their Parcels as Common Expenses under Article 6.

8.6 Mutual Waiver. Each Owner, for itself and to the extent legally permissible on behalf of its Permittees and insurance carriers, waives the right of recovery against Declarant, the Manager and any other Owner for any: (a) loss or damage to property of the waiving Owner in the Development; (b) loss or damage to Improvements in the Development or the contents thereof; and (c) other direct or indirect loss or damage caused by fire or other risks, which loss or damage is or would be covered by the property insurance (including self-insurance) required by this Article 8. Each Owner agrees to obtain for the benefit of Declarant, the Manager and each other Owner a waiver of any right of subrogation that the insurance carriers of the waiving Owner may acquire against Declarant, the Manager or any other Owner by virtue of the payment of any such loss covered by such property insurance.

ARTICLE 9 - SIGNS

9.1 General. No exterior sign may be installed or maintained by an Owner on its Parcel without first obtaining: (a) the approval of such sign by Declarant under Article 4, including its design and location; and (b) any necessary approvals and permits from the City.

9.2 Shared Signs.

(a) Subject to the requirements of government authorities, and except to any extent delegated to one or more other Owners in a Supplement, Declarant will cause to be constructed all Shared Signs for the Development in the approximate locations shown or to be shown on the Site Plan. The location, design, type, size, method of illumination, color, dimensions and total available sign area of Shared Signs will be determined by Declarant subject to conformance with applicable law. Subject to government authority, Declarant may grant any Owner the right to place sign panels on Shared Signs, which grant may be contained in this Agreement or in a Supplement. Following completion of initial construction of a Shared Sign, modifications thereto (excluding sign panels), including increase or decrease in the total available sign area, require the consent of the Manager and all Owners granted rights to place panels on such Shared Sign. Each Owner will be assessed the reasonable costs and expenses of maintenance, repair and lighting of a Shared Sign in the same proportion that the square footage of such Owner's panels bears to the total square footage of all panels (excluding any blank panels) on such Shared Sign. No Owner of a Parcel on which a Shared Sign is located may install any landscaping or other

obstruction on its Parcel that interferes with the reasonable visibility of all sign panels on the Shared Sign from the adjacent public rights-of-way, and the Manager may, at the expense of such Owner, thin, prune and trim any landscaping that interferes with such visibility.

(b) Each Shared Sign will be illuminated from dusk until dawn or such fewer hours as are unanimously approved by the Manager and all Owners having panels on such Shared Sign, subject to applicable law.

(c) The design of each Owner's sign panels must be approved by the Manager. Each Owner (or such Owner's designee) granted rights to maintain sign panels on Shared Signs is solely responsible for the costs of fabrication, installation, maintenance and repair in good operating condition of its panels in accordance with the Design Guidelines and applicable law. If any Owner fails to properly maintain or repair its Shared Sign panels (including leaving a Shared Sign exposed to the elements during sign panel fabrication), the Manager, the Owner of any other Parcel with a panel on the Shared Sign, or the Owner of the Parcel on which the Shared Sign is located (the "Notifying Owner") may at its option give the non-performing Owner Notice of such failure. If such Owner fails to commence the required performance within five days from the date of such Notice or thereafter fails to diligently prosecute such performance to completion, or if such Owner fails to complete the required performance within 30 days after the date of such Notice, the Manager or Notifying Owner may at its option perform such maintenance and repair at the defaulting Owner's sole cost.

(d) If the business of any Owner (including such Owner's Permittees) identified on a Shared Sign or a Building permanently closes, on 30 days' Notice from the Manager or a Notifying Owner, the Owner whose business has closed shall replace all panels on the Shared Sign identifying such business with blank panels of a color approved by the Manager, and remove its Building signage and repair the Building fascia, failing which the Manager or Notifying Owner may at its option do so at the cost of the Owner whose business has closed.

(e) Costs and expenses incurred by the Manager pursuant to Section 9.2(c) or 9.2(d) will be assessed to and paid by the defaulting Owner under Section 5.10, and costs and expenses so incurred by a Notifying Owner may be recovered under Article 12.

9.3 Government Regulations. All signs within the Development must conform with all applicable laws, including all necessary approvals and permits from the City and any comprehensive sign plan for the Development.

ARTICLE 10 - CONDEMNATION

If any of the Development is taken by eminent domain, condemnation or similar process by a duly constituted authority, the entire award for the value of the land and Improvements so taken belongs only to the Owner of the Parcel so taken (and to such Owner's mortgagees and tenants, as their interests may appear), and no other Owner has a right to claim any of the award by virtue of any interest created by this Agreement. Any Owner of a Parcel that is not the subject of such taking (and such Owner's mortgagees and tenants, as their interests may appear) may, however, file a separate claim with the condemning authority (but not against the Owner of the Parcel so taken) for the loss of easement or other rights to the extent of any damage resulting from the severance of the land or Improvements so taken. In the event of a partial taking, the

Owner of the portion of the Development so taken shall restore the Improvements on the Common Areas of such Owner's Parcel as nearly as possible to the condition existing prior to the taking to assure the continued ingress and egress to, from and between all areas of the Development to the extent reasonably feasible, without contribution from any other Owner.

ARTICLE 11 - RESTRICTIONS

11.1 General Limitation on Uses. All Parcels within the Development may only be used for lawful purposes in conformance with all restrictions imposed by applicable law. No Owner may use or permit the use of any of such Owner's Parcel for any of the following businesses or purposes: (a) discotheque or dance hall (but this restriction does not prohibit dancing by patrons of a restaurant not otherwise prohibited); (b) amusement arcade (not including video games, *etc.*, incidental to a primary use that is not otherwise prohibited hereunder); (c) adult book store, adult theatre, adult amusement facility or similar shop selling or displaying sexually explicit or pornographic materials (but these "adult" restrictions are not applicable to a drugstore, to a full-line bookstore, or to a full-line video store); (d) pawn shop or flea market; (e) massage parlor (except for the provision of massages by licensed massage therapists in conjunction with a beauty salon, nail salon, day spa or any medical use); (f) junk yard; (g) mortuary or funeral parlor; or (h) bar, lounge or night club, *provided that* the foregoing does not prohibit a restaurant complying with liquor licensing and other applicable laws whose primary business is the preparation and retail sale of food and alcoholic and non-alcoholic beverages for on-site consumption.

11.2 Drive-Through Facilities. Any facilities constructed on a Parcel for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for drop-off or pickup is intended (as, for example, at a restaurant, bank or pharmacy), must be designed, constructed, used and operated in such a manner that motor vehicles in line at such facility do not stop or stand in or across a Circulation Drive, or onto any portion of another Parcel (including parking areas of another Parcel), or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across the Parcels.

11.3 Environmental Restrictions and Covenants.

(a) Each Owner agrees that such Owner's Parcel and any facilities located or operations conducted thereon will not be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process hazardous, toxic or regulated substances or solid wastes of any kind, except in compliance with all applicable laws. Each Owner agrees to indemnify, defend and hold harmless Declarant, the Manager, and each other Owner for, from and against any actions, claims, liabilities, damages, costs and losses of any nature (including reasonable attorneys' fees), arising from a breach by the indemnifying Owner of this covenant.

(b) The Owner of any Parcel used to store and/or dispense motor fuels shall comply with all present and future laws, ordinances, requirements, orders, directives, guidelines, rules and regulations of government authorities having or claiming jurisdiction over any of its Parcel and of all insurance companies writing policies covering any of its Parcel (collectively "Hazardous Materials Laws"), pertaining to the generation, manufacture, refinement, transport, treatment, storing, handling, disposal, transfer, production or processing of any hazardous, toxic or regulated substances or solid wastes (collectively "Hazardous Materials"). Each such Owner

shall procure every permit, license, certificate and other authorization required for the lawful and proper use of its Parcel for the retail sale of motor fuels so long as the Parcel is used for such purposes. Each such Owner shall, at its cost, remediate any Hazardous Materials that originate and migrate from its Parcel onto or under any other Parcel in the Development, and indemnify, defend and hold harmless each and every other Owner for, from and against any costs, claims, demands and actions of any nature (including reasonable attorneys' fees) in favor of third parties for damages or injuries arising from a breach of the first sentence of this Section 11.3(b). Notwithstanding the foregoing, if any Owner initiates an action based on contamination, the burden of proof for liability will be upon the Owner initiating the action.

11.4 Additional Restrictions. To promote a diversity of uses in the Development, in connection with the development of any Parcel for a particular use (a "Benefited Parcel"), Declarant may impose future additional use restrictions on all or any part of the remainder of the Development to prohibit the same or similar uses (each a "Restricted Use"); *provided that*:

(a) If after the imposition of any Restricted Use in favor of a Benefited Parcel, the Benefited Parcel is not used and operated for the Restricted Use for 18 consecutive months for any reason other than (i) strike, lockout or other labor difficulty, fire or casualty, condemnation, war, riot, insurrection, act of God, or other temporary closure beyond the reasonable control of the Owner of the Benefited Parcel, (ii) temporary closure due to restoration, reconstruction, expansion, alteration or remodeling of Improvements on the Benefited Parcel, or (iii) government restrictions, then the future additional use restrictions imposed for the benefit of the Benefited Parcel will thereafter be void and of no further effect. Notwithstanding the foregoing, Declarant may in Supplements modify the application of this Section 11.4(a) with respect to specific Restricted Uses (by tolling, delaying the commencement of, lengthening or shortening the 18-month period, reinstating expired Restricted Uses, or otherwise).

(b) No future Restricted Use may be imposed on a Parcel at a time when the Parcel is being used for a purpose that would be prohibited thereby.

(c) Restricted Uses imposed pursuant to this Section 11.4 may be perpetual, or limited to fixed periods of time (after which such Restricted Uses will expire and be of no further effect), as determined by Declarant and set forth in the instruments pursuant to which the Restricted Uses are imposed, as described in Section 11.4(d).

(d) Restricted Uses imposed by Declarant will be effective as against all (or any part, if expressly so limited), of the Development other than the Benefited Parcel when one or more supplements to this Agreement (whether or not Supplements) setting forth such Restricted Uses are Recorded by Declarant.

ARTICLE 12 - ENFORCEMENT

12.1 Remedies. If an Owner or its Permittee breaches or threatens to breach this Agreement, Declarant, the Manager, and any of the other Owners will be entitled to any or all remedies available at law or in equity, including the rights to collect damages, enjoin such breach or threatened breach, and obtain specific performance.

12.2 Self-Help. In addition to all other remedies, a defaulting Owner fails to cure a breach of this Agreement by such Owner or its Permittee within 30 days following Notice of such default from Declarant, the Manager or another Owner (unless, with respect to any such breach which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such period and thereafter diligently prosecutes such cure to completion), Declarant, the Manager or any nondefaulting Owner may at its option cure such default on behalf of such defaulting Owner and be reimbursed by such defaulting Owner on demand for the reasonable costs thereof (including attorneys' fees and court costs), with interest at the rate of 16% per annum from the date such costs are incurred until paid.

12.3 Lien Rights. Any right to damages or reimbursement, including interest, costs and attorneys' fees, Declarant, the Manager or any Owner under this Article 12 may be assessed against the defaulting Owner in favor of the prevailing party and constitutes a lien (an "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective when a Notice of lien with respect thereto is Recorded; *provided that* any such Assessment Lien will be subject and subordinate to: (i) liens for taxes and public charges which by law are expressly made superior; (ii) liens Recorded prior to the recordation of said Notice of lien; (iii) any lien for assessments under Article 7; (iv) *bona fide* easements; and (v) *bona fide* leases with third parties (regardless of whether Recorded) entered into prior to when the Notice of lien is Recorded. An Assessment Lien may be foreclosed under then-prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency). Declarant and the Manager may, in lieu of exercising any lien rights arising under this Section 12.3, proceed under Article 7 as if the amount owing to Declarant or the Manager hereunder were a delinquent assessment described therein.

12.4 Remedies Cumulative. The remedies specified herein are cumulative and in addition to all other remedies permitted at law or in equity.

12.5 No Cancellation. Notwithstanding anything to the contrary herein, no breach of this Agreement will entitle Declarant, the Manager or any of the Owners to cancel, rescind or otherwise terminate this Agreement, but such limitation does not affect any other rights or remedies that Declarant, the Manager or any Owner may have by reason of a breach of this Agreement.

ARTICLE 13 - TRANSFER

13.1 No Transfer. The rights, powers and obligations conferred on each Owner under this Agreement (excluding Declarant or the Manager) may not be transferred or assigned by such Owner except through a transfer of its Parcel complying with Section 13.2. The foregoing sentence will not prohibit an Owner from delegating or passing through any such rights, powers or obligations to a Permittee occupying such Owner's Parcel, which is permitted but will not release such Owner from liability by reason thereof.

13.2 Sale by Owner. Upon the conveyance or other act or occurrence which results in an Owner (other than Declarant) no longer owning fee title to such Owner's Parcel (a "Transfer"), the following apply:

(a) The Owner shall give Notice of the Transfer to the Manager on or before the date the Transfer is Recorded or otherwise becomes effective.

(b) On or before the effective date of the Transfer, the new Owner (the "Transferee") shall execute and deliver to the Manager a statement containing the name and address of the Transferee and its signed agreement to be bound by this Agreement and perform all obligations hereof applicable to the Parcel. Failure to deliver such written statement will not affect any easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards contained herein running with the land, nor will such failure negate or otherwise affect the liability of any Owner or Transferee pursuant to this Agreement, but such failure shall constitute a default of this Agreement by the Transferee.

(c) The transferring Owner will be released from obligations under this Agreement arising from acts, omissions and occurrences after the effective date of the Transfer of its entire interest in the Development to an unaffiliated solvent Person and the receipt by the Manager of the statement of the Transferee described in Section 13.2(b), *provided that* the transferring Owner is not then in default in the performance of this Agreement. However, nothing in this Section 13.2 will affect the priority, validity or enforceability of any lien placed on the transferred Parcel under Article 7 or Article 12.

13.3 Fractionalized Interests. If any Owner Transfers an interest in its Parcel in a manner which vests ownership of fractionalized interests in more than one Person, then the several owners of such interests must designate one of their number to act on behalf of all such owners in the performance of this Agreement, which designation the Manager may rely on until Notice of a new designation by such owners or an order of a court of competent jurisdiction is received by the Manager to the contrary; *provided that,* all such owners will be jointly and severally liable under this Agreement. This Section 13.3 does not apply to subdivisions of a Parcel, which are governed by the definition of "Parcel" set forth in Section 1.17.

ARTICLE 14 - DECLARANT'S RIGHTS

14.1 Declarant's Rights and Obligations.

(a) Declarant may assign, in whole or in part, to one or more Persons, any rights and obligations of Declarant under this Agreement (including for purposes of this Article 14 any rights and obligations of the Manager), whereupon such Person(s) will succeed to the rights and obligations assigned. Such assignment must be in writing, expressly refer to this Section 14.1(a), specify the rights and obligations being assigned, contain an assumption by such Person(s) of the rights and obligations assigned, and be executed by Declarant and its assignee and Recorded. Promptly after such assignment is Recorded, the assignee will provide a copy of such assignment to each Owner. Any such assignee of Declarant may similarly further assign such rights and obligations. The term "Declarant" or "Manager" (as applicable) as used herein includes all such assignees as to the rights and obligations assigned. Declarant may engage agents, employees and contractors to exercise and perform any rights and obligations of Declarant under this Agreement, but none of them will be an assignee of Declarant's rights or obligations in the absence of a Recorded assignment. In addition to or combination with an assignment described above, Declarant may assign to an Owners Quorum (defined in Section 14.2) any of Declarant's rights in this Agreement (but not Declarant's obligations) by an assignment executed by

Declarant and Recorded, whereupon the Owners Quorum will succeed to the rights assigned without the necessity of an assumption of such rights.

(b) Declarant (including for purposes of this Section 14.1(b) any successors or assigns) may at any time to resign and withdraw as to any of its rights and obligations as Declarant under this Agreement by executing and causing to be Recorded a Notice thereof referring to this Section 14.1(b). A copy of such Notice will be given to all Owners; *provided that* such resignation will be effective when Recorded as provided above, and receipt by all Owners of such Notice is not a condition of effectiveness.

(c) Notwithstanding anything to the contrary in this Agreement, and regardless of any transfer by Declarant of any of the Development, Declarant retains in gross all rights and obligations of Declarant in this Agreement with respect to which Declarant has neither made an assignment under Section 14.1(a) nor a resignation and withdrawal under Section 14.1(b). Declarant is released from further obligation or liability under this Agreement as to rights and obligations of Declarant thereafter accruing with respect to which an assignment under Section 14.1(a) or resignation and withdrawal under Section 14.1(b) is applicable. At such time as a full assignment, resignation or withdrawal as to all rights and obligations of Declarant under this Agreement has occurred, Declarant will thereafter have no further right, power or authority to act, and no further obligation or liability thereafter accruing, as Declarant under this Agreement.

(d) All rights of Declarant set forth in this Agreement may be exercised by Declarant in its sole discretion, and no exercise by Declarant of any such right may be challenged or set aside as being arbitrary, capricious, unreasonable or in bad faith. However, in the absence of specific language to the contrary in the assignment from Declarant, any successor or assignee of Declarant (but not Evergreen) is obligated to exercise the rights so assigned reasonably and in good faith.

(e) Declarant may include in Supplements such waivers of the provisions of this Agreement with respect to an individual Parcel or Owner as Declarant deems appropriate, so long as any such waiver, in the sole discretion of Declarant: (i) does not result in an unsafe, unsanitary or aesthetically displeasing condition; (ii) does not result in a substantial departure from the common plan of development contemplated by this Agreement; and (iii) has no adverse effect on the easement rights or any Restricted Use in favor of any Owner or its Parcel otherwise contained herein. No such waiver will automatically entitle any Parcel or Owner to the same or any subsequent or additional waiver, as each such waiver will be considered on its own merits.

(f) Notwithstanding anything to the contrary in this Agreement, Declarant reserves the right to modify the provisions of this Agreement in Supplements as they generally apply between portions of the Development used for retail purposes ("Retail Uses") and any portions of the Development used for lodging, office or other non-retail purposes ("Non-Retail Uses"), as reasonably appropriate, in Declarant's good faith judgment, to facilitate Non-Retail Uses. Such modifications may include restricting or prohibiting cross-parking between Retail Uses and Non-Retail Uses and requiring Owners to use reasonable efforts to enforce any such restriction or prohibition against their Permittees; permitting condominium plats or condominium covenants, conditions or restrictions not inconsistent with this Agreement to be Recorded against Parcel(s) used for Non-Retail Uses; permitting the establishment of associations applicable to Non-Retail Uses (a "Non-Retail Association"); providing that a Non-Retail Association may be treated as the

Owner of Parcel(s) used for Non-Retail Uses under this Agreement for purposes of maintenance, payment of assessments, granting approvals on behalf of members of the Non-Retail Association, or otherwise; permitting a Non-Retail Association or the Owner of a Parcel used for Non-Retail Uses to construct and charge its Permittees for reserved (including covered parking); extending minimum time periods for construction or phased construction of Improvements on Parcel(s) to be used for Non-Retail Uses; and/or limiting the definition of "Common Areas" as it pertains to Parcel(s) used for Non-Retail Uses, and other modifications. However, except as expressly enumerated in this Section 14.1(f) or as contemplated under Article 11, modifications under this Section 14.1(f) may not include new restrictions on portions of the Development then used for Retail Uses.

14.2 Designation of Persons to Assume Declarant's Rights or Obligations. As to any rights or obligations of Declarant under this Agreement with respect to which Declarant has resigned and withdrawn without making an assignment to one or more successors, including rights and obligations of the Manager, the Owners of 51% or more of the total square feet of land area in the Development (excluding the Wash Area) (an "Owners Quorum") may at any time and from time to time designate a Person or Persons to succeed to any such rights or obligations. Likewise, an Owners Quorum may at any time remove a Person (other than Evergreen) then exercising any rights or obligations of Declarant and designate a Person or Persons to succeed to such rights and obligations. Any such designation must be in writing, refer to this Section 14.2, specify the rights and obligations being assigned and Person(s) succeeding to such rights and obligations, contain an assumption by such Person(s) of such rights and obligations, and be executed by the requisite Owners and Recorded. During any time no Person is entitled to exercise specific rights or obligations of Declarant, without otherwise affecting the validity and enforceability of the remainder of this Agreement: (a) no Owner has the right to exercise or enforce any such unassigned rights or obligations; (b) if rights of consent or approval by Declarant are unassigned, any action by an Owner otherwise requiring such consent or approval may be taken without obtaining such consent or approval; and (c) if at any time no Manager is serving, each Owner is responsible for maintaining and insuring at its expense all Common Areas and Improvements on its Parcel (excluding Shared Signs, which will be jointly and proportionately maintained and insured by Owners entitled to representation thereon, and Private Water and Sewer Mains, which will be jointly maintained in equal shares by those Owners served thereby).

14.3 Declarant's Exculpation. Notwithstanding anything to the contrary in this Agreement, no Declarant will have any liability for mistakes or errors in judgment or for any acts performed or omitted under this Agreement in the absence of actual fraud, gross negligence or bad faith on the part of such Declarant, and each Owner waives and relinquishes any claims against Declarant on account thereof.

14.4 Property Owner's Association. So long as Declarant owns any interest in the Development, Declarant may at its option and the cost of the Owners form a property owners' association (the "Association") for the benefit of the Development. The Association must be a nonprofit Arizona corporation having articles of incorporation, bylaws, a board of directors and other rights and attributes customary for developer-controlled commercial property owners' associations in retail developments in metropolitan Flagstaff, Arizona, as reasonably determined by Declarant's legal counsel. Membership by all Owners in any Association will be mandatory. Declarant may assign to the Association any rights and obligations of Declarant set forth in this

Agreement. Declarant will retain effective control of the Association until Declarant no longer owns any interest in the Development, when control of the Association will be transferred to the Owners in the same proportions as the gross land area of each Owner's Parcel bears to the total gross square footage of land area of all Parcels in the Development (excluding any Wash Area). If an Association has not been formed at such time as no Person is entitled to exercise any rights or obligations of Declarant, the Owners Quorum may exercise the rights of Declarant in this Section 14.4.

14.5 Annexation and Deannexation.

(a) Declarant may from time to time annex any adjacent real property, any portion of which is included on *Exhibit C* hereto, into the Development and subject such property to this Agreement by causing to be Recorded a supplement to such effect signed by Declarant and any different Owner of the annexed property.

(b) Declarant reserves the right to deannex and remove from the Development and the effect and operation of this Agreement real property then owned by Declarant in fee (but not then subject to a lease unless the tenant joins therein); *provided that,* as a condition to any such deannexation and removal any then-existing (i) use restrictions imposed against the property to be removed, whether under Article 11, Supplements or otherwise, and (ii) easements on, over, above, under or across the property to be removed that are necessary for the reasonable use and benefit of another Parcel, must be preserved in a manner that will not permit the termination or amendment of such restrictions or easements except by such action as is necessary to amend this Agreement. Easements on property to be removed for cross-parking or vehicular or pedestrian access, ingress and egress over Common Areas that are not Circulation Drives are not necessary for the reasonable use and benefit of other Parcels.

ARTICLE 15 - PLATTING

Declarant reserves the right to obtain the approval of the City to the recordation of one or more subdivision plats for any of the Development, including any amendments thereto (collectively with any such plats previously recorded a "Plat"). In connection with recordation of and future Plat, each Owner shall: (a) cooperate with Declarant in accomplishing the recordation of the Plat as long as such Owner incurs no material third-party expense in connection therewith, and no rights or benefits under this Agreement in favor of such Owner are materially and adversely affected thereby; (b) reasonably consent to a change in the record legal description of such Owner's Parcel, as long as the description on the Plat is the legal equivalent of the description in the original conveyance from Declarant to such Owner (less any portions previously dedicated or to be dedicated to a government authority); and (c) reasonably consent to the dedication of any of the Circulation Drives, additional public right-of-way outside of Building Envelopes if required by the City or Arizona Department of Transportation, or public utility and other normal and customary easements shown on the Plat, as long as they are otherwise consistent with this Agreement. Each Owner agrees to execute the Plat within 15 days following request by Declarant, failing which Declarant is irrevocably designated as such Owner's authorized agent, coupled with an interest, to execute the Plat for such Owner.

ARTICLE 16 - TERM

This Agreement and the easements, covenants, conditions and restrictions herein will be effective when this Agreement is Recorded and continue in perpetuity except to any extent this Agreement is modified, canceled, terminated or rescinded in whole or in part under Article 17.

ARTICLE 17 - AMENDMENT

This Agreement may not be amended, canceled, terminated or rescinded in whole or in part, except by a writing executed and acknowledged by Declarant, the Owners of 75% or more of the total land area in the Development (excluding any Wash Area), and Recorded. Notwithstanding the foregoing, the number and location of Shared Signs, and/or any of the Development then owned by Declarant and shown on the Site Plan, including Circulation Drives, parking layout, ratio and traffic flow pattern, and the location and extent of any Building Envelopes depicted thereon, may be amended from time to time by Declarant's executing and causing to be Recorded a supplement to this Agreement [whether Supplements or otherwise] amending the Site Plan (subject to restrictions or limitations with respect thereto imposed by government authority); *provided that* no such modification may materially increase an Owner's obligations or liabilities without such Owner's consent. Any amendment, cancellation, termination, rescission or supplementation of this Agreement in compliance with this Article 17 by Declarant and/or the requisite Owners will be binding and effective immediately, any custom or law to the contrary notwithstanding.

ARTICLE 18 - MISCELLANEOUS

18.1 Notices.

(a) Any notice, request demand, approval, consent or other communication made or given under or pursuant to this Agreement (each a "Notice") must be given in writing and hand-delivered, sent by reputable nationwide overnight courier (*e.g.*, Federal Express), or sent by certified or registered United States mail, postage prepaid, return receipt requested, at the addresses indicated below, unless the party giving such Notice has been given notice of a change of address, or Recorded pursuant to this Agreement:

Declarant: Evergreen–Trax, L.L.C.
2828 North Central Avenue, Suite 1110
Phoenix, Arizona 85004
Attn: Robert M. Karber

With a copy to: Evergreen Devco, Inc.
2390 East Camelback Road, Suite 410
Phoenix, Arizona 85016
Attn: Laura Ortiz

Other Owners: Unless designated in a Supplement to this Agreement, or otherwise advised to the contrary by Notice in accordance herewith, to the address for mailing tax

bills set forth in the County's latest real property tax rolls available

Any Notice is effective on the date delivered if hand-delivered on the next-succeeding business day after deposit with an overnight courier for next-day delivery, or if Notice is sent through the United States mail, on the date of actual delivery as shown by the addressee's receipt or three mail service days after mailing, whichever first occurs. Any Recorded Notice is effective when Recorded.

(b) Each Owner shall give a copy to its Mortgagee of any default Notice given to the Owner, *provided that* the Mortgagee has previously requested the right to receive any such Notices by submitting an address to which the Notice shall be delivered and giving all Owners and the Manager the following certification:

> The undersigned, whose address is 2390 E. Camelback Rd. #410 Phx AZ 85016 certifies that it is the holder of a first lien on the real property described on Exhibit A hereto which is a Parcel in The Trax I retail center in Flagstaff, Arizona. If any default Notice is to the Owner on whose Parcel this lien applies, a copy thereof must be delivered to the undersigned, who will have all rights of the Owner to cure the default pursuant to the Common Operation and Reciprocal Easement Agreement ("COREA"). Failure to deliver such a copy in no way affects the validity of the default Notice with respect to such Owner, but tolls any time period for cure by the undersigned or the taking by the undersigned of any other action required under the COREA, until such Notice is delivered to the undersigned.

Any Notice to an Owner's Mortgagee must be given in the same manner as provided in Section 18.1(a). The Mortgagee will have the same right, to be exercised if at all concurrently with such defaulting Owner, to cure such default. Giving any default Notice or the failure to deliver a copy to any Mortgagee will not create any liability on the part of Declarant, the Manager or any Owner so declaring a default.

18.2 Attorneys' Fees. If Declarant, the Manager or any Owner institutes a legal action or proceeding for the enforcement of any right or obligation in this Agreement, the prevailing party in such action or proceeding is entitled to recover its costs and reasonable attorneys' fees incurred in the action or proceeding.

18.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval may not be unreasonably delayed or withheld.

18.4 No Waiver. No waiver of any default by an Owner may be implied from any omission by Declarant, the Manager, or another Owner to take any action with respect to such default. Notwithstanding the foregoing, Declarant may waive on behalf of all Owners the enforcement of any provision in this Agreement, upon a determination that such waiver is in the best interests of the Development as a whole.

18.5 No Agency. Nothing in this Agreement creates the relationship of principal and agent or of partners or joint venturers or of any other association among any Owners.

18.6 Covenants to Run with Land. All easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards herein will run with the land and create equitable servitudes with respect to the relevant servient tenements in favor of the entire Development, bind (except as otherwise expressly stated) every Person having any fee, leasehold, lien or other interest therein and inure to the benefit of Declarant, the Manager and the Owners and their respective successors and assigns. All agreements herein are covenants regardless of whether expressly so designated.

18.7 Grantee's Acceptance. The grantee of any Parcel or portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or from a subsequent Owner of the Parcel, accepts such deed or contract on and subject to all easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards herein. By such acceptance, any such grantee will consent and agree to and with Declarant, the Manager and the other Owners, to comply with and perform the obligations and agreements in this Agreement with respect to the property acquired by such grantee.

18.8 Lenders. The charges and burdens of this Agreement are and will be prior and superior to the lien or charge of any mortgage or deed of trust affecting any Parcel or part thereof or Improvements now or hereafter placed thereon; *provided that,* a breach of this Agreement or the enforcement of lien rights herein granted will not defeat or render invalid any such lien or charge given in good faith and for value by any institutional lender.

18.9 No Rights in Public. Nothing in this Agreement creates any rights in the general public or dedicates for public use any of the Development.

18.10 Taxes and Assessments. Each Owner shall pay all taxes, assessments and charges of any type levied or made by any government authority or agency with respect to its Parcel. If an Owner fails to pay any such taxes, assessments or charges prior to delinquency, and such failure continues for 15 days after Notice by the Manager to such Owner, the Manager may at its option pay said taxes, assessments and/or charges, and the cost thereof, with interest thereon at the rate 16% per annum until paid, will be a charge and continuing lien on the Parcel until paid, subject to foreclosure by the Manager pursuant to Article 7.

18.11 Severability. Each provision of this Agreement is declared to be independent of and severable from the remainder of this Agreement. If any provision herein is held to be invalid or unenforceable or not run with the land, such holding does not affect the remainder of this Agreement. If the validity or enforceability of any provision of this Agreement is held to be dependent on the existence of a specific legal description, the Manager will promptly cause such legal description to be prepared, at the cost of the Owners.

18.12 Time of Essence/Force Majeure. Time is of the essence of this Agreement. However, no Person is liable for any failure or delay in performance under this Agreement (other than for the payment of money) to the extent such failure or delay is caused by an event that: (a) is not reasonably foreseeable; (b) is beyond the reasonable control of the Person; and (c) occurs without the fault or negligence of the Person (each a "Force Majeure Delay"). Upon the

occurrence of a Force Majeure Delay, the time for performance will be extended for a period equal to the duration of the Force Majeure Delay.

18.13 Entire Agreement. This Agreement (including all Exhibits hereto), with any Supplement, contains the complete declaration, understanding and agreement of Declarant with respect to all matters referred to herein.

18.14 Construction. Underlined captions preceding the Sections and Articles herein, are for convenience of reference only, and may not be used as an aid to the construction or interpretation of this Agreement. Whenever applicable, the singular form includes the plural, and the masculine gender includes the feminine and neuter, and *vice versa*. "Including" means by way of example and not limitation.

18.15 Disclaimer. Declarant makes no warranty or representation that any plans envisioned for the Development at the time this Agreement is Recorded can or will be carried out, or that the Development will be committed to or developed for any particular use, or that if the Development or any portion thereof is once used for a particular use, such use will continue. Declarant makes no representation or warranty that the use of any of the Development will not change in the future.

18.16 Ownership of Development. The validity and binding effect of this Agreement is not affected or impaired by reason of the ownership of the entire Development by the same Person.

18.17 Prescriptive Easements/Adverse Possession. No title, easement or use pertaining to any of the Development may be established by prescription or adverse possession, the statute of limitations and/or laches for such purposes being expressly hereby waived.

18.18 Perpetuities. Declarant intends that any interest in real or personal property created under this Agreement that violates the rule against perpetuities be minimally reformed to cure the violation, rather than terminated. In this regard, if a court determines that an interest created under this Agreement violates the rule, upon the petition of any interested Person, the court shall reform the interest to either vest, if at all, or terminate, 21 years after the death of the last survivor of all lineal descendants (including by adoption) of the 40th President of the United States, Ronald Wilson Reagan, living when this Agreement is Recorded.

18.19 Neighboring Property. Declarant reserves the right to enter into separate agreements with owners of real property in the vicinity of the Development (but not a part thereof) to grant or obtain vehicular and/or pedestrian cross access rights or easements over such adjacent real property or the Common Areas intended for such purposes, or to grant or obtain other reasonable easements, on such terms and conditions as Declarant determines in its discretion. Contributions, if any, by such adjacent owners toward the costs of maintenance of the Common Areas will be credited in reduction of Common Expenses otherwise payable by the Owners under Article 6.

18.20 Estoppel Certificate. The Manager and each Owner will issue within 20 days following receipt of a request (made not more than three times during any year) from any other Owner or the Manager, to the requesting Person or its existing or prospective lender, an estoppel

certificate stating to the issuer's actual knowledge as of such date, whether: (a) it knows of any default under this Agreement and if there are known defaults, specifying the nature thereof; (b) this Agreement has been assigned or amended in any way by it and if so, the nature thereof; (c) any sums are currently due and payable under this Agreement from or to the requesting Person; and (d) this Agreement is in effect. Such statement constitutes a waiver of any claim by the issuer to the extent such claim is based on facts contrary to those asserted in the statement and to the extent the claim is asserted against a *bona fide* lender or purchaser/assignee for value without knowledge of facts to the contrary of those in the statement and who has acted in reasonable reliance on the statement.

18.21 Consent to Assignment and Obligations of Declarant's Mortgagee. Each Owner consents to any assignment by Declarant to any mortgagee ("Mortgagee") holding a lien granted by Declarant pursuant to any mortgage or deed of trust ("Mortgage") on any of the Declarant's interest in the Development of Declarant's rights and obligations as "Declarant" under this Agreement, subject to this Section 18.21. If a Mortgagee succeeds to the rights of Declarant pursuant to an exercise of its rights under any Mortgage, the Mortgagee will be bound by the terms of this Agreement and the Owners will have the same rights and remedies against the Mortgagee for a breach of this Agreement as the Owners would have against Declarant but for the assignment; *provided that* the Mortgagee will not be liable to the Owners for any act or omission of Declarant including any failure to pay amounts owing or to be paid hereunder or to perform any act or obligation required to be performed by Declarant hereunder, arising prior to the date Mortgagee succeeds to Declarant's rights and takes possession of any of the Development. The Mortgagee will assume the obligations and be liable to the Owners under this Agreement only for matters and obligations arising or to be performed from and after the date the Mortgagee succeeds to Declarant's rights hereunder and takes and holds possession of any of the Development, and any further or additional liability will terminate on the transfer by the Mortgagee of its interest in the Development; *provided that,* the Mortgagee has no personal liability for any obligations under this Agreement except to the extent of, and the Mortgagee's liability is limited to, the Mortgagee's interest in the Development.

18.22 Development Agreements. Evergreen (including any affiliate designated by Evergreen) may, before or after this Agreement is Recorded, enter into a government development agreement, economic development agreement and/or similar agreement(s) with the City or other applicable government authorities (all of which are a "Development Agreement"). If Evergreen enters into a Development Agreement, the following provisions apply:

(a) Any economic benefit under a Development Agreement will belong solely to Evergreen, free of any claim by Declarant (if other than Evergreen), the Manager, or any Owner, Permittee or other Person. Evergreen may assign any such benefit to Persons of Evergreen's choosing.

(b) Each Owner and Permittee agrees to report store sales and sales taxes to Evergreen and the City or other applicable government authority, if directed by Evergreen, to satisfy any sales tax reporting requirements under a Development Agreement.

(c) A Recorded Development Agreement is a permitted exception to title, and is prior and superior to the interests of Owners and Permittees and Persons claiming through them. Owners and Permittees are advised to familiarize themselves with any Development Agreement

that is Recorded or under negotiation by Evergreen, and to take title subject to and to be bound by any obligation, burden or restriction in a Development Agreement whether Recorded before or after the date that this Agreement is Recorded.

(d) A Development Agreement may not be modified, amended or terminated without the prior consent of Evergreen and the applicable government authority.

18.23 Permittees. Any Supplement may provide that any Permittee is a third-party beneficiary of, and/or may on a non-exclusive basis enforce any of the relevant Owner's (as an Owner) rights under, this Agreement.

18.24 Governing Law. The law of the State of Arizona governs the interpretation, validity, performance and enforcement of this Agreement.

IN WITNESS WHEREOF, Declarant has executed this Agreement as of the date first written above.

EVERGREEN-TRAX, LLC,
an Arizona limited liability company

By: Trax Investors, LLC,
an Arizona limited liability
company, Managing Member

By: EOP Holdings, LLC,
an Arizona limited liability
company, Managing Member

By: _____

_____, Manager

STATE OF ARIZONA)
) ss
County of Maricopa)

MELISSA COCANOWER
Notary Public - Arizona
Maricopa County
Expires 03/31/2017

The foregoing instrument was acknowledged before me on Carl Potzwick, 2014, by Manager, the Manager of EOP Holdings, LLC, an Arizona limited liability company, Managing Member of Trax Investors, LLC, an Arizona limited liability company, the Managing Member of EVERGREEN–TRAX, LLC, an Arizona limited liability company, all on behalf of the last company.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT "A"
DEVELOPMENT

THE HERIN DESCRIBED PARCEL BEING A PORTION OF PARCEL A, AS SET FORTH ON C.O.F. CONSOLIDATION MAP RECORDED IN 2006-3396857, OFFICIAL RECORDS OF COCONINO COUNTY ARIZONA AND MORE PARTICULARLY DESCRIBED BELOW;

PARCEL A

THE FOLLOWING DESCRIBES A PARCEL OF LAND, PORTIONS OF THE EXISTING BURLINGTON NORTHERN SANTA FE RAILWAY, HUNTINGTON DRIVE AS DESCRIBED IN DOCKET 861, PAGE 914 AND DOCKET 918, PAGE 574; PARCEL A, RECORDED IN BOOK 8, PAGE 57; AND THE PARCEL DESCRIBED IN DOCKET 1442, PAGE 754, COCONINO COUNTY RECORDS; LYING IN SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN; FLAGSTAFF, COCONINO COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST ¼ CORNER OF SECTION 14 MARKED BY A FOUND 2-1/2" BRASS CAP STAMPED "CITY OF FLAGSTAFF RLS 16544" FROM WHICH THE NORTH EAST CORNER OF SECTION 14, A FOUND 3" ADOT BRASS CAP IN HANDWELL BEARS NORTH 0°23'15" EAST, 2670.69 FEET, BASIS OF BEARINGS FOR THIS DESCRIPTION;

THENCE NORTH 89°18'14" WEST, 220.63 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF B.N.S.F. RAILROAD, FROM WHICH A FOUND 3" BNSF ALUMINUM CAP BEARS NORTH 42°06'33" EAST 874.48 FEET AND FROM WHICH A FOUND 3" BNSF ALUMINUM CAP BEARS SOUTH 42°06'33" WEST 2557.05 FEET;

THENCE SOUTH 42°06'33" WEST, 2557.05 FEET TO A FOUND 3" BNSF ALUMINUM CAP;

THENCE NORTH 47°02'26" WEST, 66.06 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON" ON THE SOUTHERLY RIGHT OF WAY OF S.R. B40 (RT 66) AND **THE TRUE POINT OF BEGINNING;**

THENCE ALONG SAID RIGHT-OF-WAY NORTH 40°46'58" EAST, 176.42 FEET TO THE BEGINING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 2909.79 FEET AND A CENTRAL ANGLE OF 7°56'31" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 36°48'43" EAST 403.01 FEET AND A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 403.34 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 35°26'19" EAST, 2038.56 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 41°25'16" EAST, 103.26 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 36°40'02" EAST, 258.40 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 44°29'34" EAST, 153.20 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON" AND THE BEGINNING OF A NONTANGENT CURVE WITH RADIAL BEARING OF SOUTH 50 17'00" EAST 3745.72 FEET;

THENCE NORTHEASTERLY A DISTANCE OF 307.88 FEET ALONG SAID CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 3745.72 FEET AND A CENTRAL ANGLE OF 4°42'34";

THENCE NORTH 76°43'07" EAST, 37.33 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 40°00'50" EAST, PARALLEL WITH AND 74 FEET SOUTHWESTERLY FROM THE FOURTH STREET CENTERLINE, 136.85 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 45°29'37" EAST, 77.52 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 47°25'21" EAST, 82.26 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 44°58'58" EAST, 2.86 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 42°53'04" EAST, 47.30 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE SOUTH 42°06'33" WEST, 3431.53 FEET TO A FOUND 3" BNSF ALUMINUM CAP;

THENCE NORTH 40°46'58" EAST, A DISTANCE OF 176.42 FEET TO THE **TRUE POINT OF BEGINNING**. CONTAINING 18.46 ACRES, MORE OR LESS.

EXCEPTING THE FOLLOWING DESCRIBED PARCEL

BEGINNING AT A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON" ON THE SOUTHERLY RIGHT OF WAY OF S.R. B40 (RT 66) AND **THE TRUE POINT OF BEGINNING;** ALSO BEING THE NORTHWEST CORNER OF PARCEL A, AS SET FORTH ON C.O.F. CONSOLIDATION MAP RECORDED IN 2006-3396857,

THENCE ALONG SAID RIGHT-OF-WAY NORTH 40°46'58" EAST, 176.42 FEET TO THE BEGINING OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 2909.79 FEET AND A CENTRAL ANGLE OF 7°56'31" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 36°48'43" EAST 403.01 FEET AND A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 403.34 FEET TO A FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE NORTH 35°26'19" EAST, 1350.1 FEET TO A POINT FOUND ½" REBAR WITH PLASTIC CAP STAMPED "RLS 16630 WOODSON";

THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 55°17'28"EAST, 266.40 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF B.N.S.F. RAILROAD;

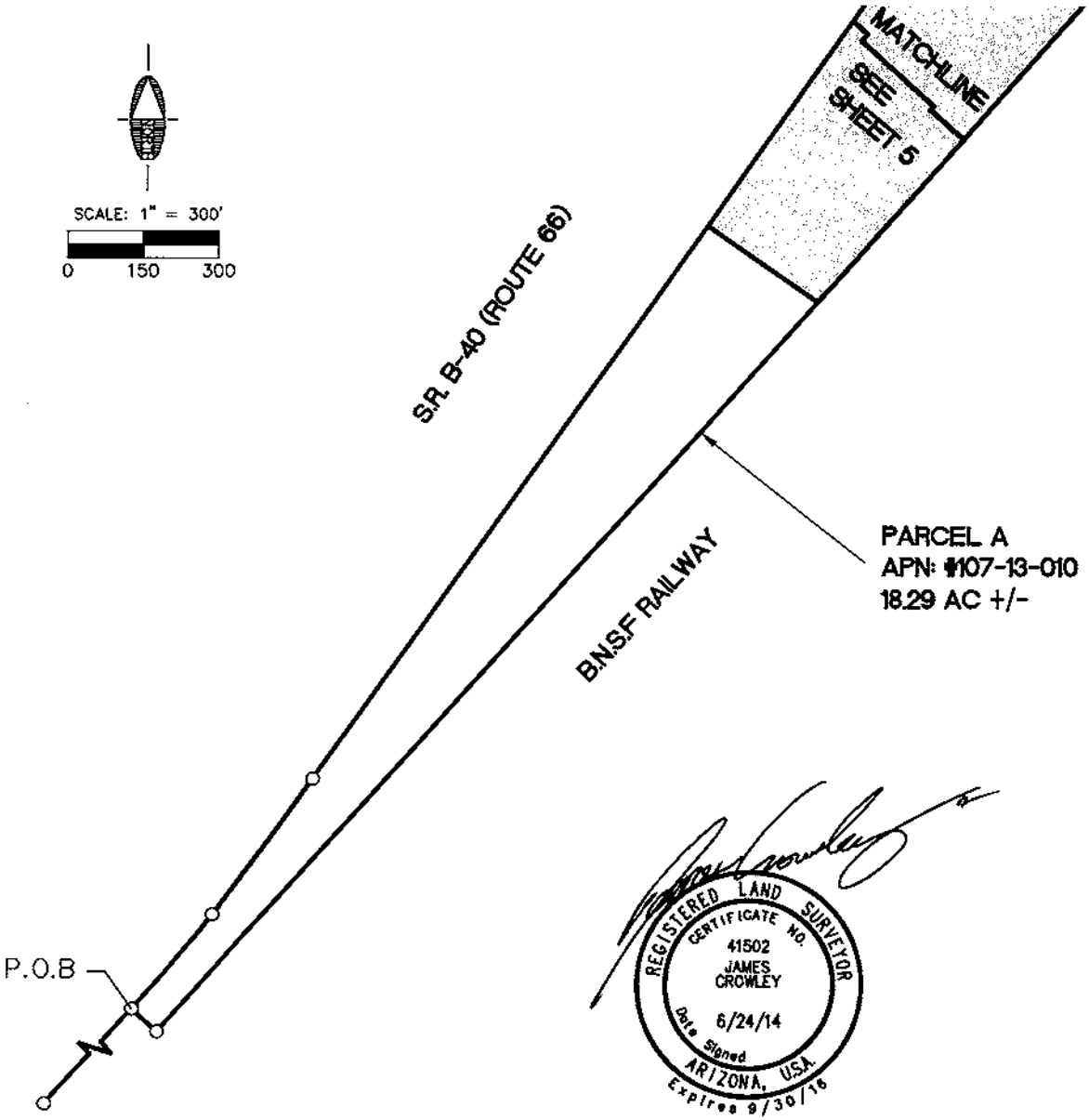
THENCE SOUTH 42°06'33" WEST, 1953.94 FEET TO A FOUND 3" BNSF ALUMINUM CAP;

THENCE NORTH 40°46'58" EAST, A DISTANCE OF 176.42 FEET TO THE **TRUE POINT OF BEGINNING**. CONTAINING 6.87 ACRES, MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
41502
JAMES
CROWLEY
6/24/14
Date Signed
ARIZONA, U.S.A.
Expires 9/30/16

EXHIBIT "A"

A PORTION OF SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST GILA AND SALT RIVER MERIDIAN, CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA

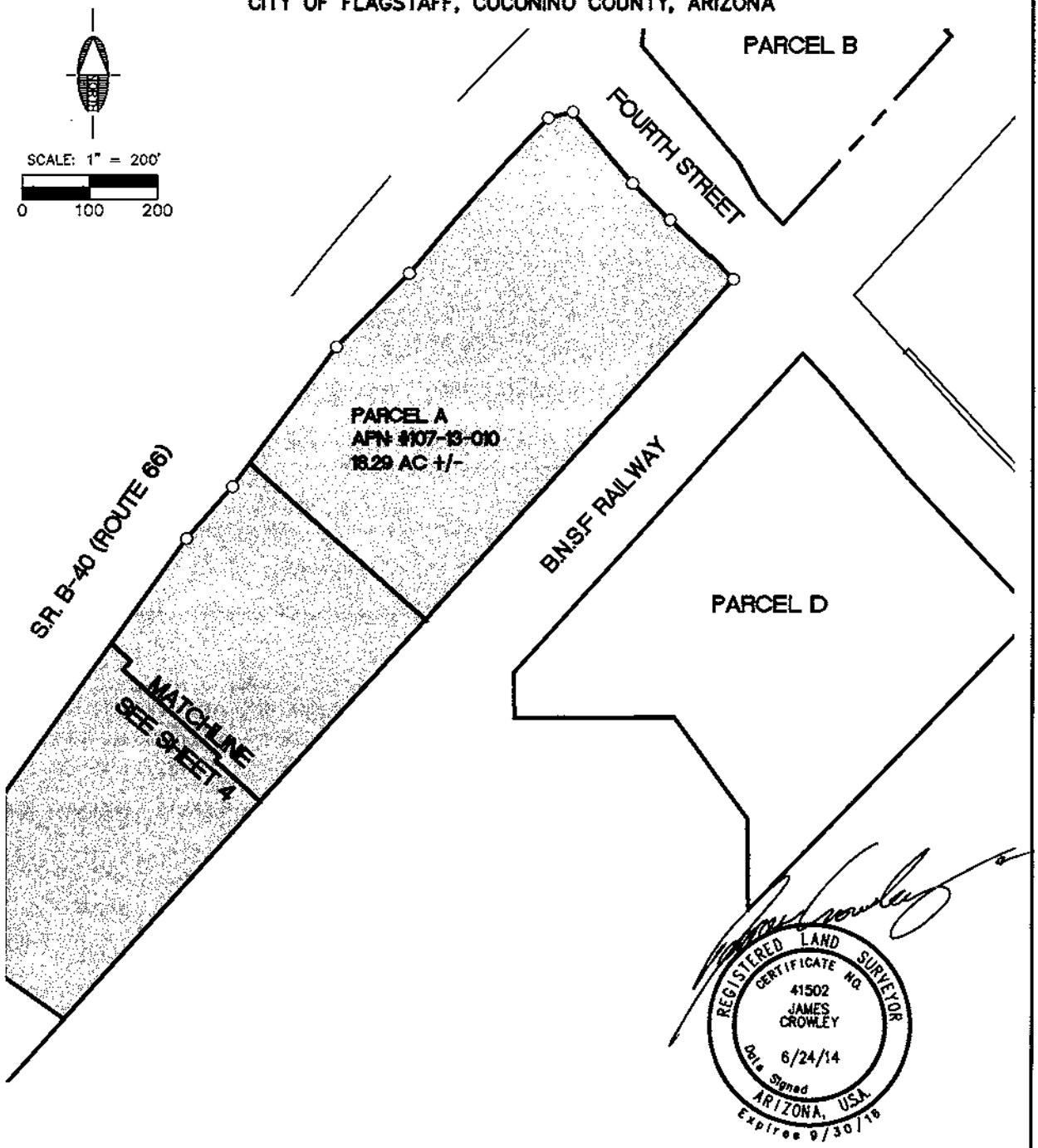


FILE: P:\2011\11294\Survey\Data - Internal\FROM #####(OFFICE)\2014-06-23 from Flagstaff for lease legals\Legal Descriptions\11294 Parcel-A lease parcel 2014-06-23 EXHIBIT.dwg DATE: Jun 24, 2014-10:57am

SWI Shephard Wesnitzer, Inc.	110 W. Dale Avenue Flagstaff, AZ 86001 928.773.0354 928.774.8934 fax www.swiaz.com	JOB NO. 11294	THE TRAX — FLAGSTAFF, ARIZONA
		DATE MAY 14	EXHIBIT "A"
		SCALE 1" = 300'	SHEET 4 OF 5
		DRAWN TRL	
		DESIGN	
		CHECKED ADB	

EXHIBIT "B"

A PORTION OF SECTIONS 13 AND 14, TOWNSHIP 21 NORTH, RANGE 7 EAST GILA AND SALT RIVER MERIDIAN, CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA



SWI Shephard / Wesnitzer, Inc.	110 W. Dale Avenue Flagstaff, AZ 86001 928.773.0354 928.774.8934 fax www.swiaz.com	JOB NO. 11294	THE TRAX	FLAGSTAFF, ARIZONA
		DATE MAY 14		
		SCALE 1" = 200'	EXHIBIT "A"	SHEET 5 OF 5
		DRAWN TRL		
		DESIGN		
		CHECKED ADB		

FILE: P:\2011\11294\Survey\Data - Internal\FROM ######(OFFICE)\2014-06-23 from Flagstaff for lease legals\Legal Descriptions\11294 Parcel-A lease parcel 2014-06-23 EXHIBIT.dwg PLOTTED: Jun 24, 2014-10:58am

EXHIBIT 'C'

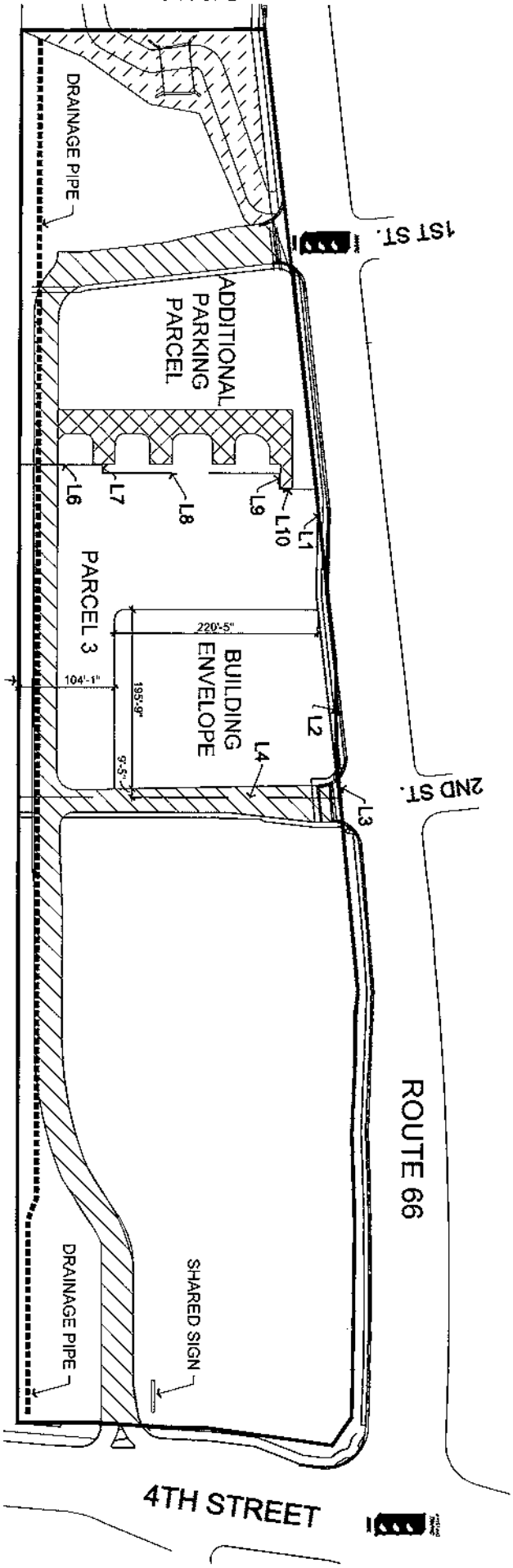

1ST ST.
2ND ST.
ROUTE 66
4TH STREET
DRAINAGE PIPE
DRAINAGE PIPE
ADDITIONAL PARKING PARCEL
PARCEL 3
BUILDING ENVELOPE
SHARED SIGN
L1
L2
L3
L4
L6
L7
L8
L9
L10
220'-5"
195'-9"
104'-1"
9'-5"

EXHIBIT B
SHEET 2 OF 2

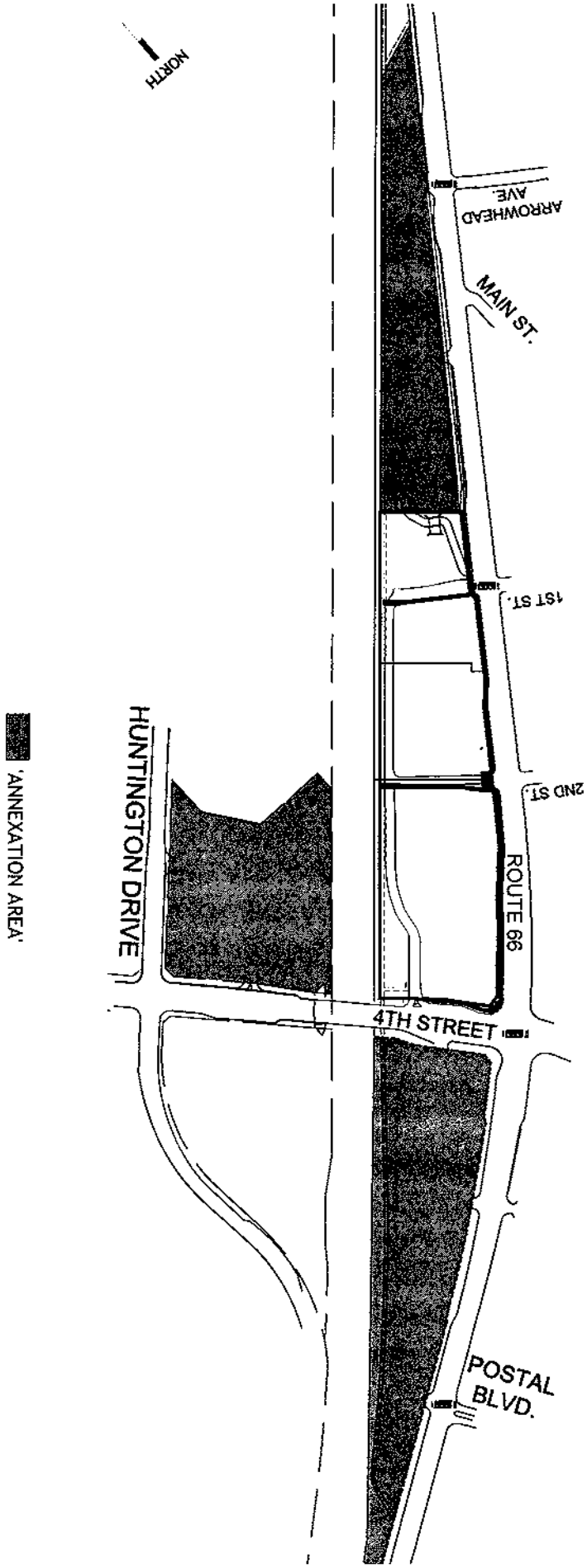
LINE TABLE

NUMBER	BEARING	DISTANCE
L1	N 42° 06'33" E	1477.59'
L2	S 55° A1' 28" E	266.40'
L3	N 35° 26' 19" E	688.46'
L4	N 41° 25' 16" E	103.26'
L5	N 36° 40' 02" E	258.40'
L6	N 44° 29' 34" E	153.20'
L7	N 7° 43' 07" E	37.33'
L8	S 40° 00' 50" E	136.85'
L9	S 45° 29' 37" E	77.52'
L10	S 47° 25' 21" E	82.26'
L11	N 44° 58' 58E	02.86'
L12	S 42° 53'04" E	47.30'

CURVE TABLE

NUMBER	DELTA	RADIUS	LENGTH
C1	4° 42' 34"	3745.72'	307.88

EXHIBIT 'C'


NORTH
ARROWHEAD AVE.
MAIN ST.
1ST ST.
2ND ST.
ROUTE 66
HUNTINGTON DRIVE
4TH STREET
POSTAL BLVD.
'ANNEXATION AREA'