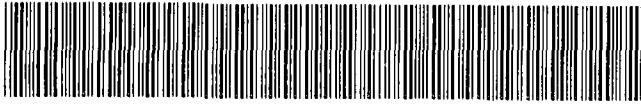





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AMENDED AND RESTATED
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR AV ZONE 5
 OMAHA, DOUGLAS COUNTY, NEBRASKA

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**AMENDED AND RESTATED DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR AV ZONE 5**

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR AV ZONE 5 ("Declaration"), is made and entered into as of the 17th day of July, 2014, by Zone 5, LLC, a Nebraska limited liability company ("Declarant"), Zone 5 Entertainment, LLC, a Nebraska limited liability company ("Zone 5 Entertainment") and Lot 2 Restaurant, LLC, a Nebraska limited liability company ("Lot 2 Owner").

WITNESSETH:

WHEREAS, Declarant, Zone 5 Entertainment and Lot 2 Owner are the current fee simple owners of certain property located in Douglas County, Nebraska, which is legally described on Exhibit A (the "Zone 5 Property");

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions, dated as of December 4, 2009, and recorded on December 4, 2009, as Instrument Number 2009130072 (the "CCRs");

WHEREAS, Zone 5 Property continues to be developed and Declarant and Zone 5 Entertainment desires to amend and restate the CCRs to incorporate certain provisions related to the development of the Zone 5 Property; and

WHEREAS, Declarant desires to establish for its benefit and for the mutual benefit of all future Owners (as defined below) of the Lots, or any part thereof, certain mutually beneficial easements, restrictions and obligations with respect to the use, operation and maintenance of the Zone 5 Property, consistent with a quality, first class, unified multi-use development.

NOW, THEREFORE, Declarant hereby declares that the Zone 5 Property shall be held, sold, leased and conveyed subject to the following covenants, conditions, easements and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in such properties or any, part thereof, and their successors and assigns and shall inure to the benefit of each owner or occupant thereof.

**ARTICLE I
DEFINITIONS**

Section 1.1 "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation filed with the Nebraska Secretary of State on August 28, 2009, for the Association.

Section 1.2 "Association" shall mean the Zone 5 Owners Association, Inc., a Nebraska non-profit corporation, its successors and assigns, and unless the context otherwise requires, shall mean and include its board of directors, officers and other authorized agents.

Section 1.3 *"Board"* or *"Board of Directors"* shall mean the Board of Directors of the Association, as contemplated in the Bylaws.

Section 1.4 *"Bylaws"* shall mean the Bylaws of the Association, dated September 21, 2009, as amended from time to time.

Section 1.5 *"Common Areas"* shall mean the portion of the Zone 5 Property intended for the nonexclusive use by the Owners and their Permittees, in common with other users. Common Areas shall include, but not be limited to, common utility lines and systems, public parking areas designated as common areas from time to time by Declarant, accessways, driveways, lanes, entrances, public restrooms, walkways, sidewalks, escalators and stairs located within or about the parking area and sidewalks, landscaping, any detention or retention ponds, areas and drainage facilities, plaza areas, public lighting, directional signage, signage promoting the Zone 5 Property, security lighting and facilities, if any, public art, as may exist from time to time, and any other areas designated as common areas by Declarant or the Board; provided, however, Common Areas shall not include any facilities in the interior of any building or other Improvement used exclusively by the Owner or tenants of that building.

Section 1.6 *"Declarant Affiliate"* shall mean any entity which, directly or indirectly, controls, is controlled by, or is under common control with the Declarant.

Section 1.7 *"Declarant Control Period"* shall mean the time period commencing with the recording of the Declaration and continuing until the earlier of (a) the date Declarant no longer owns a Lot in the Zone 5 Property, or (b) the date Declarant elects, in its discretion in an instrument recorded against the Zone 5 Property, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration. The Declarant shall be deemed to own any Lot in which the Declarant or a Declarant Affiliate owns an interest in the record owner of such Lot.

Section 1.8 *"Improvements"* shall mean all land preparation and excavation, buildings, outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, drainageways, utilities, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, windbreaks, plantings, planted trees and shrubs, sidewalks, bicycle racks, planters, poles, flags, signs, storage or display areas, loading areas, docks, water retention areas, fountains, water features, ponds, recreational facilities and all other structures, land development or landscaping improvements of every type and kind.

Section 1.9 *"Lot"* or *"Lots"* shall mean and refer to any platted lot or lots located on the Zone 5 Property, as may be subdivided or replatted.

Section 1.10 *"Lot 5"* shall mean that certain real property legally described as Lot 5, Aksarben Village Replat 11, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Section 1.11 *"Master CCR"* shall mean that certain Declaration of Covenants, Conditions and Restrictions for Aksarben Village, dated August 2, 2007, and recorded August 15, 2007, as Instrument Number 2007093504 in the Office of the Register of Deeds, Douglas County, Nebraska, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Aksarben Village, dated June 8, 2009, and recorded June 12, 2009, as Instrument Number 2009061484 in the Office of the Register of Deeds, Douglas County, Nebraska and as otherwise amended from time to time.

Section 1.12 *"Open Space Agreement"* shall mean that certain Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property approved by Declarant and anticipated to be recorded in the Office of the Register of Deeds, Douglas County, Nebraska against the Zone 5 Property.

Section 1.13 *"Owner"* shall mean and refer to the record owner of a fee simple title to a Lot, excluding, however, those parties having such interest merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust or a mortgagee).

Section 1.14 *"Parking Garage"* shall mean the parking garage constructed or to be constructed on a portion of the Zone 5 Property currently legally described as Lot 5, Aksarben Village Replat 11, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, provided such property lines may be adjusted or altered prior to construction. For purposes of this Declaration, the Parking Garage shall not be deemed a "Common Area."

Section 1.15 *"Permittee"* shall mean all Owners, their Tenants or licensees of the Lots, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees.

Section 1.16 *"Tenant"* shall mean the designated tenant or lessee under a lease agreement for parts of the improvements constructed on the Zone 5 Property, and including any sublessees or subtenants of a Tenant.

Section 1.17 *"Zone 5 Common Parking, LLC"* is or will be the fee title owner of the Parking Garage and will be responsible for construction of the Parking Garage.

Section 1.18 In addition to the definitions set forth above, there are other defined terms set forth elsewhere in this Declaration. All of the recitals to this Declaration are incorporated into this Declaration as though fully rewritten here at length.

ARTICLE II ASSOCIATION

Section 2.1 Formation of Association. The Association shall be a non-profit corporation formed under the laws of the State of Nebraska, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and Articles of Incorporation of the Association. Upon incorporation of the Association by Declarant, the Association shall be charged with the duties and vested with the powers set forth in the Articles and Bylaws of the Association and this Declaration.

Section 2.2 Powers and Responsibilities. The Association shall have the powers conferred upon non-profit corporations organized under the laws of the State of Nebraska and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association as provided in this Declaration and the Articles and Bylaws of the Association. The business and affairs of the Association shall be managed by its Board of Directors and the Directors shall have all of the powers set forth in the Bylaws and all other powers now or hereafter conferred by law.

Section 2.3 Membership. Each Owner, including Declarant, shall be a member of the Association (a "Member") and, by its purchase or acquisition and ownership of a Lot, shall be

deemed to have agreed to be bound by all provisions of this Declaration, the Bylaws and all amendments, as well as all other Association documents, including, but not limited to, any rules and regulations promulgated by the Association or the Board. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot. Membership shall not be transferred, pledged or alienated in any way, except as appurtenant to the transfer of ownership of a Lot. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void and shall not be reflected upon the Association's books and records.

Section 2.4 Voting. Each Member shall be entitled to the number of votes set forth in the Bylaws and shall be entitled to vote on each matter properly coming before the Members of the Association, as determined by the Bylaws.

Section 2.5 Board of Directors. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and Bylaws of the Association. Except as otherwise provided herein or in the Articles or Bylaws of the Association, all acts of the Association shall be made by a majority of the Directors on the Board of Directors. The Board of Directors may also appoint various committees at its discretion and may contract with a person or entity to serve as a manager who shall, subject to the direction of the Board of Directors, be responsible for the day-to-day operation of the Association. The Board of Directors shall determine the compensation to be paid to the manager and any employees of the Association. The number of Directors on the Board of Directors shall not be less than three (3) nor more than seven (7). The initial Board of Directors of the Association shall consist of three (3) Directors and shall be appointed by the Declarant upon incorporation of the Association. During the Declarant Control Period, the Declarant shall have the sole right, in its absolute discretion, to appoint and remove Directors. Upon expiration of the Declarant Control Period or the earlier relinquishment by Declarant of its appointment rights, the Members shall then elect all Directors as provided in the Bylaws of the Association. No member of the Board of Directors or of any committee of the Association or employee of the Association, or any manager, or the Declarant, or any agent employee or officer of Declarant, shall be personally liable to any Owner, or to any Tenant or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by such person or entity, acted in good faith without willful or intentional misconduct.

Section 2.6 Rules and Regulations. The Board of Directors shall have the right to promulgate such rules and regulations as it deems necessary and each Member shall be bound by such rules and regulations. The rules and regulations may govern and restrict the use of any area of the Zone 5 Property. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein.

Section 2.7 Administration and Compliance. If the Articles or Bylaws of the Association are in any way inconsistent with this Declaration, then the Bylaws shall prevail and control. Each Owner and Tenant of a Lot shall comply with, and shall cause their respective Permittees to comply with, the provisions of this Declaration, the Bylaws and such rules and regulations as the Association may implement, as each may be amended from time to time. Failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law, each of which remedies shall be cumulative and in addition to any other available remedy.

ARTICLE III MASTER CCR

Section 3.1 The Zone 5 Property is subject to the Master CCR and the Open Space Agreement and each Member shall comply with the provisions thereof. Failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law, each of which remedies shall be cumulative and in addition to any other available remedy. If the Bylaws or Declaration are in any way inconsistent with the Master CCR or the Open Space Agreement, then the Master CCR or Open Space Agreement shall prevail and control.

ARTICLE IV CONSTRUCTION REQUIREMENTS

Section 4.1 Plan Approval. Commencing upon the full execution of this Declaration, before commencing any work on Improvements on any Lot (including expansions or alterations to existing Improvements), the Owner of such Lot shall first submit to the Declarant (during the Declarant Control Period) and the Board of Directors for prior written approval, the plans and specifications for such Lot which shall include, but not be limited to, the following items proposed to be located on the Lot (i) the footprint of any buildings or other Improvements, (ii) the vertical and horizontal dimensions for any Improvements, (iii) building architectural elevations depicting materials, (iv) exterior design, including all building materials and colors, (v) any landscaped areas, (vi) any parking areas, sidewalks, accessways and entrances to the Lot and (vii) any other proposed common areas to be located on the Lot. All Improvements constructed on any Lot shall be constructed in accordance with a site plan approved in accordance with this Declaration and otherwise in accordance with the Master CCR. Upon approval by the Declarant and the Board of the applicable plans and specifications, any proposed common area shall become and remain Common Area under this Declaration and the Bylaws unless otherwise designated by the Declarant or the Board. The approval by the Declarant and the Board of any plans submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, sufficiency, performance or compliance with laws and regulations. All modifications to an approved plan now or hereafter proposed by the Owner of such Lot must be approved by the Declarant and Board in accordance with this Article IV prior to commencement of such modifications.

Section 4.2 Performance of Construction. Each Owner shall be bound to perform all construction on its Lot or Lots (i) in accordance with the applicable plans and specifications as approved by the Declarant and the Board of Directors, (ii) with due diligence and in a good and workmanlike manner, using new and first-class materials, (iii) in full cooperation with Declarant and the other Owners of the Zone 5 Property to the extent necessary to effect a unified, integrated development, (iv) in accordance with all applicable laws, ordinances, rules and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such construction, (v) only after having procured and paid for authorizations of the various departments and governmental agencies having jurisdiction and (vi) in accordance with the terms and provisions of this Declaration and the Master CCR. The Owners shall be responsible for providing staging and parking areas for its construction workers so as to keep the public parking areas and accessways available for customers of the Zone 5 Property and surrounding development. The Owners shall keep all Common Areas and other Lots free from debris and shall repair or replace any Common Areas damaged by Owner or its agents, employees or contractors. The Owners in the performance of their construction shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of any other

Owner, (ii) unreasonably interfere with any other construction being performed on the Zone 5 Property, or (iii) unreasonably impair the use, occupancy or enjoyment of the development or any part thereof.

Section 4.3 Indemnity. Each Owner shall indemnify, defend and hold harmless the other Owners from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of any mechanic's liens or other claims regarding materials supplied or work performed, or the death of, or any accident, injury, loss or damage whatsoever caused to, any person or to the property of any person, as shall occur by reason of the performance of any construction by or at the request of the indemnitor, except for claims caused by the gross negligence or willful act or omission of the indemnitee, its licensees, concessionaires, agents, servants or employees. If any mechanic's, materialman's or other similar lien shall at any time be filed against any part of the Zone 5 Property on account of any work, labor or services performed or claimed to have been performed or on account of any materials furnished or claimed to have been furnished, for or at the direction of an Owner, such Owner shall, without cost or expense to any other Owner, cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction within thirty (30) days after the filing of said lien.

ARTICLE V PARKING GARAGE

Section 5.1 Ownership. Zone 5 Parking is or will be the fee title owner of the Parking Garage lot. Every Owner shall be a Member of Zone 5 Parking and such membership shall automatically terminate when such person or entity ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Lot. Each Owner, by acceptance of a deed of other conveyance of a Lot, thereby becomes a Member, whether or not this Declaration or such membership interest is made a part of, incorporated by reference or express in said deed or conveyance. Termination of membership shall not relieve or release any such former Owner from any liability or obligation incurred during the period of such ownership and membership in Zone 5 Parking. Furthermore, termination of membership shall not impair any rights or remedies which Zone 5 Parking, the Owners or the Association may have against such former Owner arising from, or in any way associated with, such ownership and membership and the covenants and obligations incident thereto.

Section 5.2 Construction. Zone 5 Parking shall cause the Parking Garage to be constructed in accordance with plans and specifications approved by the Declarant.

Section 5.3 Parking Garage Rights. Zone 5 Parking hereby grants to the Owners, their tenants and invitees but not the public generally, an easement to use the Parking Garage for vehicular parking, subject to rules and regulations as the Association may establish from time to time.

Section 5.4 Use of Parking Garage. The intent of Zone 5 Parking, the Declarant, the Association and the Owners is to have the office tenants and their employees and invitees park on the second, third, fourth and fifth floors and to leave the first floor available for retail customers on a first come, first serve basis with no specific allocation for the retail components of the Zone 5 Property. The initial allocation of daytime parking for the office users in the Zone 5 Property shall be as set forth on Exhibit B; provided, however, as development progresses on the undeveloped Zone 5 Lots, Zone 5 Parking shall have discretion to equitably adjust the allocations and/or to further define the rights to use of stalls, access and/or exclusive rights.

Notwithstanding the foregoing, in no event shall the allocation for Lot 7 or Lot 1 be reduced from the number set forth on Exhibit B without the express written approval of the applicable Lot Owner; provided, however, so long as that certain Lease Agreement with Pacific Life Insurance Company, Nebraska corporation ("Pacific Life"), dated as of April 28, 2014 and evidenced by that certain Memorandum of Lease, dated April 28, 2014 and recorded on July __, 2014 as Instrument Number _____ in the Register of Deeds Office of Douglas County, Nebraska in in effect for the building located on Lot 7, the allocation for Lot 7 cannot be reduced without Pacific's Life express written approval. The Owners hereby acknowledge that the allocations set forth on Exhibit B, as may be revised from time to time, are only applicable from 8 a.m. to 5 p.m. on weekdays and 8 to noon on Saturday, and shall not otherwise apply to evening or weekend parking, which shall be a first come, first serve basis with no specific allocations to the various users within the Zone 5 Property. Zone 5 Property may establish rules and regulations governing the use and access of the Parking Garage and may elect to install gates or other security devices to control access to the Parking Garage or certain areas within the Parking Garage.

Section 5.5 Maintenance. Following the completion of the Parking Garage, the Association shall be responsible for maintaining, repairing and replacing the Parking Garage, accessways, sidewalks and any other Improvements located on Lot 5. The cost of maintenance, repair and replacement for which the Association is responsible under this Section shall be apportioned among the Owners in accordance with this Agreement and shall be assessed as part of the regular assessments in accordance with the provision of Article 6 hereof.

Section 5.6 Parking Charges. The Owner of each Lot shall be responsible for its share of actual expenses incurred by the Association in administrating, operating, managing, maintaining, repairing, rebuilding, replacing, restoring, insuring, financing (including covering debt servicing for applicable financing) the Parking Garage and Improvements thereon ("Parking Garage Charges"). The Board shall provide yearly estimates of the Parking Garage Charges and shall levy regular and special assessments against each Lot in accordance with Section 5.7 below.

Section 5.7 Regular Assessments.

(a) Purpose. Regular Assessments shall be used for all expenses incurred by the Association for the administration, operation, maintenance, repair and replacement of the Parking Garage and any improvements therein or otherwise on Lot.

(b) Budget. Prior to the commencement of each calendar year, the Association shall, without a vote of the Owners, establish an operating budget for the Parking Garage Charges and the regular assessment for each Owner for the forthcoming year. Failure by the Association to fix regular assessments hereunder before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or the Articles or a release of the Owner from the obligation to pay the actual assessments, or any installment thereof, for that or any subsequent year, but the regular assessment fixed for the preceding year shall continue until a new regular assessment is fixed. Each Owner shall pay to the Association, on demand, the amount, if any, equal to the amount by which the Owner's Prorata Share of the actual Common Area Charges exceeds the Regular Assessment paid by such Owner.

(c) Payment. The regular assessments shall be due in twelve equal, monthly payments on the first day of each month.

(d) Actual Assessments. On or before March 31 of each year, the Association shall provide to the Owners a statement of the actual Parking Garage Charges incurred for the preceding year. If the actual Parking Garage Charges are greater than the regular assessments, each Owner shall pay its Prorata Share of the difference within thirty (30) days after receipt of such statement. If the actual Parking Garage Charges are less than the estimated regular assessments, the Association shall refund to each Owner its allocated Prorata Share of such excess within thirty (30) days after delivery of such statement, or shall credit such overpayment against the next ensuing payment or payments of regular assessments due from each Owner for the current year.

Section 5.8 Special Assessments

(a) Purpose. Special Assessments may be levied by the Association from time to time during any fiscal year if the Association determines the estimated total amount of funds necessary to defray the expenses of the Association for the Parking Garage obligations for a given fiscal year is or will become inadequate to meet expenses due to costs of unexpected repairs, replacement of the Parking Garage or other improvements on Lot 5.

(b) Time and Manner of Payment. The Association may, in its discretion, prorate a Special Assessment over the remaining months of the fiscal year or levy the Special Assessment immediately against each Zone 5 Lot. Special Assessments shall be due and payable with ten (10) days after a Owner receives written notice from the Association specifying the amount of the special assessment, unless the Association specifies in such notice a later date of payments.

Section 5.9 Owners Prorata Shares. Each Owner's Prorata Share of the Parking Garage assessments (regular or special) shall be determined by the square footage of all improvements located on the applicable Lot compared to the square footage of all improvements in the Zone 5 Lots; provided, however, any residential component of a Zone 5 Lot shall not be included in this calculation but may instead pay a fixed monthly fee to be equitably determined by the Association, which amount shall reduce the total to be allocated among the other Owners. The initial Prorata Share of each Owner is as set forth on Exhibit B attached hereto. In addition, the Association may, from time to time, equitably reallocate the Prorata Share of the Owners and may take into account all reasonable factors, including but not limited to, the use of each Zone 5 Lot, the amount of improved square footage on each Lot and the amount of parking needed to accommodate the uses of the applicable Lot.

Section 5.10 Liens for Assessments or Fines. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner (i.e., record owner of the applicable Zone 5 Lot) at the time the assessments first become due and payable. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Zone 5 Lot in respect of which the assessments are charged. The grantee of any Lot shall be jointly and severally liable with the grantor of the Zone 5 Lot for all unpaid assessments against a Lot assessed and due prior to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.

Section 5.11 Effect of Nonpayment of Assessments. All assessments levied by the Association shall be a lien upon the Zone 5 Lots and a personal obligation of all Owners (i.e., record owners of the applicable Zone 5 Lot). Any installment of Assessments shall bear interest from the due date at a rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Zone 5 Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Parking Garage or abandonment of a Zone 5 Lot. The mortgagee of any Lot shall have the right to cure any delinquency of a Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association

Section 5.12 Taxes and Assessments. The Parking Garage Charges shall expressly include all real and personal property taxes and assessments levied on or against Lot 5 and/or the Parking Garage.

Section 5.13 Liens for Assessments or Fines. The Parking Garage Charges, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time the assessments first become due and payable pursuant to the Bylaws. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the assessments are charged. The grantee of any Lot shall be jointly and severally liable with the grantor of the Lot for all unpaid assessments against a Lot assessed and due prior to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.

ARTICLE VI LOT AND COMMON AREA MAINTENANCE AND TAXES

Section 6.1 Maintenance by Owners. Each Owner and Tenant shall maintain or cause to be maintained, at its expense, its Lot, including any adjacent public right-of-ways, and all Improvements completed thereon (except those Common Areas to be maintained by the Association as set forth herein) in a well-maintained, clean, neat and attractive condition at all times and shall comply with all applicable health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Except for those Common Areas to be maintained by the Association, each Owner and Tenant's maintenance obligations under this Section shall include, but not be limited to:

- (a) Maintaining paved surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Association or committee thereof, or such substitute as shall in all respects be equal in quality, use and durability to that originally approved and installed;
- (b) Removing all paper, mud and sand, snow and ice, trash, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities (including lighted signs) as shall be required or permitted;

(e) In the event vertical improvements or structures are located on the lot, maintaining all signs, all windows, doors, perimeter walls and exterior building walls (including, but not limited to, all retaining walls) and other exterior surfaces in a good condition and state of repair;

(f) Promptly removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements;

(g) Maintaining any pedestrian, vehicular or other easements granted or reserved pursuant to the terms and conditions of this Declaration; and

(h) In the event any act, omission or condition caused by any Owner or its Tenant or Permittees results in the destruction or removal of any landscaping, trash receptacle, bench, bike rack, light poles or other Improvements within the Common Areas maintained by the Association hereunder, the Association shall have the right to either, (i) require the Owner, at its sole cost and expense, repair and replace, in a good and workmanlike manner, free of liens and to as good a condition as the condition of such Improvements prior to such destruction or removal, all such Common Areas or (ii) cause the repair and replacement of such Improvements, in which case the Owner shall promptly reimburse the Association for such costs. Any landscape Improvements shall be promptly replaced with landscaping and other materials of like size and kind as approved by the Association or committee thereof. Notwithstanding anything herein to the contrary, in the event of an emergency or if any portion of the Common Areas located on a Lot is rendered unsafe or hazardous for any reason, at the Association's reasonable discretion, the Association shall have the right, but not the obligation, to immediately repair or remove such condition, in which case the Owner shall promptly reimburse the Association for such costs.

Section 6.2 Maintenance by Association. The Association shall maintain the Common Areas, including the Improvements within the Common Areas and all landscaping within the Common Areas, in good condition and repair, including snow removal, and replace the same as may be necessary from time to time, subject to the following:

(a) The Board of Directors shall maintain a reasonably high standard in providing for the repair, management, maintenance and replacement of the Common Areas; however, the Board of Directors shall be the sole judge as to the appropriate maintenance thereof; and

(b) The cost of maintenance, repair and replacement for which the Association is responsible under this Section shall be apportioned among the Owners in accordance with the Bylaws and shall be assessed as part of the regular assessments in accordance with the provision of Section 6.3 hereof.

Section 6.3 Common Area Charges. The Owner of each Lot shall be responsible for its share of actual expenses incurred by the Association in administrating, operating, managing, maintaining, repairing, rebuilding, replacing, restoring, securing, monitoring, promoting and insuring the Common Areas and Improvements thereon in accordance with the Bylaws ("Common Area Charges"). The Association may install and thereafter maintain as Common Area one or more monument signs for the Zone 5 Property, which costs shall be part of the Common Area Charges. The Board shall provide yearly estimates of the Common Area Charges and shall levy assessments against each Lot in accordance with the Bylaws. In addition to assessments for Common Area Charges, the Board of Directors shall levy any assessment levied against the Zone 5 Property in accordance with the Master CCR, the Open Space Agreement or any other covenants, restrictions or agreements of record against each Lot in accordance with the Bylaws. The Board shall also have the right to levy special assessments in accordance with the Bylaws. The time and manner of payment of such assessments shall be governed by the Bylaws.

Section 6.4 Taxes and Assessments. Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot and any Improvements located thereon, and any personal property owned or leased by such Owner in the Zone 5 Property, provided that if such taxes or assessments or any part thereof may be paid in installments, each Owner may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Owner from contesting at its cost and expense any taxes and assessments with respect to its Lot in any manner such Owner elects, so long as such contest is in accordance with applicable law and maintained with reasonable diligence and in good faith.

Section 6.5 Liens for Assessments or Fines. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time the assessments first become due and payable pursuant to the Bylaws. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the assessments are charged. The grantee of any Lot shall be jointly and severally liable with the grantor of the Lot for all unpaid assessments against a Lot assessed and due prior to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.

ARTICLE VII INSURANCE

Section 7.1 Insurance by the Association. The Association shall maintain or cause to be maintained in full force and effect commercial general liability insurance in an amount to be determined by the Executive Board and such other insurance which the Executive Board considers appropriate to protect the Association.

Section 7.2 Insurance by Owners. Each Owner (as to its Lot only) shall maintain or cause to be maintained the following insurance in accordance with the requirements in the Bylaws (i) commercial general liability insurance, (ii) workers' compensation insurance, (iii) employer's liability insurance, (iv) automobile liability insurance, and (v) any other insurance required pursuant to the Bylaws, as may be amended from time to time.

Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner and the Association from and against all claims or demands, including any action or

proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Permittee, or damage to the property of any Permittee located on the Lot owned by each indemnifying Owner; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Owner, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Owner was not at fault, then the indemnifying Owner shall reimburse such other Owner for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

Section 7.3 Insurance During Construction. Prior to commencing any construction activities within the Zone 5 Property, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring the following insurance in accordance with the requirements in the Bylaws: (i) workers' compensation, (ii) employer's liability insurance, (iii) commercial general liability insurance covering all operations by or on behalf of the contractor, which shall include the following coverages: premises and operations; products and completed operations; contractual liability, insuring the indemnity obligations assumed by contractor under the contract documents; broad form property damage (including completed operations); explosion, collapse and underground hazards; and personal injury liability, (iv) automobile liability insurance including coverage for owned, hired and non-owned automobiles, and (v) contractor's umbrella/excess liability insurance.

Section 7.4 General Requirements. Each Owner and the Association shall be responsible for all insurance requirements set forth in the Bylaws including, but not limited to, the type of insurance coverage, company rating, minimum limits, named additional insureds and all other insurance requirements.

ARTICLE VIII USE RESTRICTIONS AND COVENANTS

Section 8.1 Use in General. Subject to the limitations set forth below, the Zone 5 Property shall be used as a mixed use development, including retail, office, hotel and residential uses. The first floor level of all Improvements in Zone 5 Property shall be reserved for retail purposes consistent with uses in a first class shopping center, unless otherwise approved by the Declarant. The Owners understand that the success of a mixed use development depends greatly on the appropriate tenant mix. As such, except for office use on floors above the first floor (which specific office users shall not be subject to approval except as noted below), the precise uses and allocation of use within a Lot shall be approved by Declarant during the Declarant Control Period and, thereafter, by the Association, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 8.2 Zoning and Use Compliance. All uses on the Lots must conform to this Declaration and any subsequent amendments thereto, and to all applicable zoning regulations of any municipal body or agency with jurisdiction over the Development.

Section 8.3 No Interference. No Owner shall keep or maintain anything or shall permit any condition to exist upon such Owner's Lot or cause any other condition on any Lot which materially impairs or interferes with any easement or right of any other Owner, or otherwise materially impairs or interferes with the use and enjoyment of the other Owners of the Common Areas. No Owner shall engage in or permit any activity which interferes with the reasonable enjoyment of any other Owner within the Zone 5 Property.

Section 8.4 Storage and Loading Areas. No materials, supplies or equipment shall be stored in or allowed to remain in any area on any Lot except inside a closed building. Notwithstanding the foregoing, during the construction of any building on a Lot, construction materials may be stored on such Lot provided such storage is lawful and accomplished in a manner reasonably designed to minimize any interference with the use and enjoyment of any existing building and Common Area by any Owner(s) and Permittee(s) thereof.

Section 8.5 General Prohibited Uses. The uses of a Lot shall be consistent with this Declaration. None of the following uses or operations shall be conducted or permitted on or with respect to all or any part of the Zone 5 Property unless otherwise approved by Declarant and the Board:

- (a) Any public or private nuisance;
- (b) Any use which emits or results in strong, unusual or offensive odors (but not such odors as shall normally emit from restaurants) fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (c) Any use which emits excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store;
- (d) Any use which could result in, or cause fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (e) Any operation primarily used as assembly, manufacture, refining, smelting, agriculture or mining operations;
- (f) Any mobile home or trailer court, auction house, labor camp, junkyard, stock yard or animal raising (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, pet shops shall be permitted;
- (g) Any drilling for and/or removal of subsurface substances;
- (h) Any flea market and/or swap meet;
- (i) Any bowling alley, pool hall or skating rink;
- (j) Any adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude the (i) showing of films in any first rate motion picture theater, and (ii) sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore or video store such as Blockbuster, which is normally found in a first class development;
- (k) Any establishment selling drug related paraphernalia;

(l) Any abortion clinic or drug rehabilitation clinic;

(m) Any central laundry, dry cleaning plant, or Laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pick up and delivery by the ultimate consumer; and

(n) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to (i) governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Owner, (ii) restaurants or bars that provide gambling activities as an incidental use, such as Keno.

Section 8.6 Excludes.

(a) Movie Theatre. So long as a movie theatre is open and operating on the Zone 5 Property, no other portion of the Zone 5 Property shall be used as a movie theatre. This restriction shall remain in full force and effect unless the movie theatre ceases to operate for a period of twelve (12) consecutive months, subject to casualty and force majeure.

(b) Fitness Center. So long as a fitness facility is open and operating on the Zone 5 Property, no other portion of the Zone 5 Property shall be used as fitness facility, which shall include a specialized gym (e.g., yoga, pilates, cycling, kickboxing, etc.); provided, however, this shall not preclude office users from providing fitness rooms for the use of its employees so long as it does not allow memberships to third parties not employed by such user. This restriction shall remain in full force and effect unless the fitness facility ceases to operate for a period of twelve (12) consecutive months, subject to casualty and force majeure.

(c) Specific Restaurant Uses.

(i) Sports Bar. So long as there is a restaurant on Lot 2 that is designed to create an environment where customers eat, drink and socialize while watching the latest televised sports events (such as, DJs Dugout) and is marketed to the public specifically as a sports bar (a "sports bar") open and operating on the Zone 5 Property, no other portion of the Zone 5 Property shall be used as a sports bar. This restriction shall remain in full force and effect unless DJs Dugout or a replacement occupant with a similar use ceases to operate for a period of twelve (12) consecutive months, subject to casualty and force majeure.

(ii) Pizza Restaurant. So long as there is a restaurant that features pizza as one of its primary dishes (with at least 50% of its gross *food* sales from the sale of pizza, calzones, breadsticks and garlic bread) ("pizza restaurant") open and operating on the Zone 5 Property, no other portion of the Zone 5 Property shall be used as a pizza restaurant. This restriction shall remain in full force and

effect unless Dudley's Pizza & Tavern or a replacement occupant with a similar use ceases to operate for a period of twelve (12) consecutive months, subject to casualty and force majeure.

- (iii) Sushi Restaurant. So long as there is a restaurant that features sushi as one of its primary dishes (with at least 40% of its gross *food* sales from the sale of sushi and sashimi ("sushi restaurant") open and operating on the Zone 5 Property, no other portion of the Zone 5 Property shall be used as a sushi restaurant. This restriction shall remain in full force and effect unless Ponzu Sushi and Grill or a replacement occupant with a similar use ceases to operate for a period of twelve (12) consecutive months, subject to casualty and force majeure.

Notwithstanding the foregoing, if at any time, one of the foregoing exclusives ceases due to failure to operate but a new facility opens after the twelve (12) month window for that use, then the exclusive shall again be in place and restrict an additional user from competing.

ARTICLE IX EASEMENTS

Section 9.1 Access Easements. The Owners hereby create and grant to all Owners, non-exclusive easements in the Common Areas for (i) ingress to and egress from the Lots; (ii) the passage of vehicles; (iii) the passage and accommodation of pedestrians; (iv) construction and use of, and access to the Common Areas; (v) reasonable access and use by Permittees; and (vi) the doing of such other things as are authorized or required to be done on the Common Areas under this Declaration, the Bylaws or the rules and regulations of the Association. The Association, Board and their Permittees shall have a non-exclusive easement in, to, over and across each Lot and the Common Areas for the purpose of accessing, repairing, replacing or maintaining the Common Areas in accordance with this Declaration and the Bylaws.

Section 9.2 Drainage Easement. Each of the Lots and the Owners thereof shall have nonexclusive easements in, to, over, and through the drainage patterns and systems as are established from time to time within the Common Areas, for reasonable surface drainage purposes. To the extent an Owner's Lot includes Common Areas, nothing herein shall prevent such Owner from relocating the drainage patterns established upon such Owner's Lot, provided such Owner first provides Declarant with plans respecting such relocation and such relocation does not unreasonably interfere with the drainage of other Lots within the Zone 5 Property or the other lots in the Aksarben Village development.

Section 9.3 Encroachment. Subject to written approval by Declarant during the Declarant Control Period, each of the Lots and Owners thereof shall have nonexclusive easements in, on, over and under the Common Areas for minor encroachments (together with the maintenance thereof) such as building overhangs, building support columns, canopies, eaves, foundations, slabs, footings, pillars and other minor encroachments. Neither such easements nor minor encroachments shall unreasonably (i) interfere with Declarant's use or operation of the Zone 5 Property, (ii) interfere with the adjacent Owner's use or operation of its Lot, (iii) restrict or limit the operation or use of any building or other improvement constructed on the adjacent Lot, (iv) limit or restrict the type of building or other improvements that may be constructed on the adjacent Lot or (v) materially and adversely affect the visibility, access or

signage for the buildings constructed on the adjacent Lot. Such encroachments shall be independent of the adjacent Owner's Lot and shall not receive any structural support from any improvement located on such adjacent Lot. Notwithstanding the foregoing, this subparagraph shall not create easements for intentional encroachments.

ARTICLE X EMINENT DOMAIN

Section 10.1 Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to the other Owners in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the Zone 5 Property, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas except as set forth in Section 10.2 below.

Section 10.2 Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and Improvements taken from another Owner.

Section 10.3 Tenant's Claim. Nothing in this Article shall prevent a Tenant from making a claim against an Owner pursuant to the provisions of any lease between such Tenant and such Owner for all or a portion of any such award or payment.

Section 10.4 Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall, at its sole cost and expense, promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer. In the event the Owner does not repair and restore the remaining portion of the Common Areas in a reasonable timeframe, the Board shall have the right, but not the obligation, to cause the repair and restoration of such remaining portion of the Common Areas, in which case the Owner shall promptly reimburse the Association for such costs.

ARTICLE XI MISCELLANEOUS

Section 11.1 Nature and Effect. Each and all of the easements, covenants, conditions, restrictions and provisions contained in this Declaration:

(a) are made for the direct, mutual and reciprocal benefit of the Declarant, the Association, the Owners, Tenants and Permittees of the Lots;

(b) create mutual equitable servitudes upon each Lot in favor of the other Lots, except as otherwise specifically set forth herein;

(c) constitute covenants running with the land; and

(d) shall bind every person or entity having any fee, leasehold or other interest in any portion of the Zone 5 Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, condition,

restriction or provision in question, or to the extent that such easement, covenant, condition, restriction or provision is to be performed on such portion.

Section 11.2 Rights and Obligations of Lenders. If by virtue of, any right or obligation set forth herein a lien shall be placed upon the Lot of any Owner hereto, such lien shall expressly be subordinate and inferior to the lien of any first lien holder now or hereafter placed on such Lot. Any holder of a first lien on any Lot, and any assignee or successor in interest of such first lien holder, shall be subject to the terms and conditions of this Declaration.

Section 11.3 Release from Liability. Any person acquiring fee or leasehold title to any Lot, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section 11.3, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Lots running with the land.

Section 11.4 Breach.

(a) Right to Cure. The Board or their duly authorized agents shall have the right, upon violation or breach of any other covenant, restriction or easement set forth herein, if such violation or breach continues for a period of thirty (30) days after written notice thereof is given to the Owner to enter upon the Lot where such violation or breach exists, and summarily remove, at the expense of the Owner thereof who shall pay all such expenses plus interest at the prime rate plus five percent (5%) (not to exceed the maximum rate of interest allowed by law) within five (5) days after demand, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration. Notwithstanding the foregoing, if the cure of such violation or breach cannot reasonably be effected within such thirty (30) day period, the Board shall take no action so long as such Owner has commenced the cure of such breach or violation within such thirty (30) day period and is diligent in pursuing the completion of such cure. Notwithstanding the foregoing, the remedies available for an Owner's breach due to nonpayment of Assessments are governed by the Bylaws.

(b) In addition to the rights and remedies set forth herein, in the event of any breach, default, non-compliance, violation or failure to perform or satisfy any of the covenants, conditions, restrictions and easements contained in this Declaration or the Bylaws by an Owner, if the default is not cured within thirty (30) days after written notice describing the default is given to such Owner by the Board, the Board may enforce any one or more of the following rights or remedies, or any other rights or remedies available at law or in equity, whether or not set forth herein. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive.

- (i) Damages. Declarant, the Board or any such Owner may bring a suit for damages arising from or with respect to any such default.
- (ii) Declaratory Relief. Declarant, the Board or any such Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

- (iii) Injunctive Relief; Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that Declarant, the Board and/or any Owner shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a default.
- (iv) Fines. This Subsection may be enforced only by the Board. Upon a default by a Member, the Board may assess fines based on a schedule of fines (to be reasonably related to the nature of the default) adopted from time to time by the Board for various types of defaults that may arise under this Declaration, or as the Board may assess for defaults not covered by existing schedule of fines, provided that the Board shall assess a fine that is reasonable and appropriate under the circumstances, and provided further that the assessment of a fine shall be in addition to all other rights and remedies available hereunder.
- (v) Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage, deed of trust or similar instruments securing a loan made in good faith and for value with respect to the permanent financing, construction financing or any refinancing, of any Lot or portion thereof, or any improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Lot or any portion thereof whose title is acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such mortgage, deed of trust or similar instrument.
- (vi) Denied Access. All Members shall be subject to partial or total denial of access to, benefit from, or use of all or any facilities, functions, or services, suspension partly or wholly of all or any rights or privileges of membership, following the procedure set forth in the Articles, Declaration, or these Bylaws or any other disciplinary action directed by the Board of Directors for failure to pay any dues or charges or for any other act or omission detrimental to the affairs of the Association or otherwise improper.

Section 11.5 Non-Merger. This Declaration shall not be subject to the doctrine of merger.

Section 11.6 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

Section 11.7 Entire Agreement. This Declaration and the Bylaws constitutes the entire agreement between the Owners hereto as to the matters set forth in this Declaration. This Declaration, once executed and delivered, shall not be modified or altered in any respect except upon the execution of a modification or alteration by the Owners of a majority of the Members of the Association, which modification or alteration shall be recorded in the official land records of Douglas County, Nebraska.

Section 11.8 Estoppel Certificates. Each Owner shall upon not less than thirty (30) days from receipt of written notice from any other Owner execute and deliver to such other Owner a certificate stating that (a) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other Owner or Owners are in default in any respect under this Declaration and if in default, specifying such default.

Section 11.9 Notice. Any notice required or permitted to be given under this Declaration shall be in writing and shall be made by personal delivery or deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, or deposit with a recognized national overnight courier and addressed to the Owner being notified at the address given below (or such other address which any Owner may designate for itself from time to time hereafter by written notice to the other Owners):

If to Declarant: Zone 5, LLC
 11550 I Street, Suite 200
 Omaha, NE 68137-1263
 Attn: John Hughes

If to Owner/Tenant: To the party at the street address of the Lot owned
 or occupied.

Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or overnight courier delivery or upon deposit in the United States Mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication.

Section 11.10 Assignment. The rights and obligations of any Owner hereunder may be assigned in whole or in part to any person acquiring the entire interest of such Owner in its Lot or to one or more ground lessees or lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or lease between such Owner and such ground lessee or lessee.

Section 11.11 Amendment. This Declaration may be amended, altered or repealed by the Owners representing at least seventy-five (75%) of the square footage of the Zone 5 Property, provided the Declarant consents to the amendment, alteration or repeal. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant shall have the sole right, in its absolute discretion, to amend or modify this Declaration.

Section 11.12 Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Declaration. All such exhibits constitute a part of this Declaration and by this reference are expressly made a part hereof.

Section 11.13 Limitation of Liability. Any person acquiring fee or leasehold title to any of the Lots or any portion thereof, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the

easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

Section 11.14 Term of this Declaration. This Declaration shall be effective as of the date first above written and shall continue in full force and effect until July 15, 2037. At any time within one year prior to July 15, 2037, and each thirty (30) year period thereafter (each such date being referred to as a "Termination Date"), by majority vote of the Owners, the Association may, by written declaration signed and acknowledged by a majority of the approving Owners and duly recorded with the Register of Deeds for Douglas County, Nebraska, terminate this Declaration, effective as of the next Termination Date. Failing such termination, this Declaration shall automatically be renewed and extended for successive period of thirty (30) additional years, subject to the right of the Association by a vote of the majority of the Owners to terminate this Declaration. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

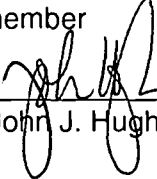
Section 11.15 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

**[Remainder of Page Intentionally Left Blank.
Signature Page to Follow.]**

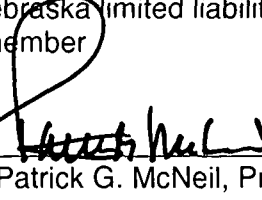
IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration as of the day and year first written above.

ZONE 5, LLC,
a Nebraska limited liability company,

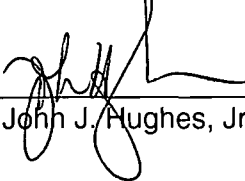
By: Magnum Development Corporation,
a Nebraska limited liability company,
its member

By: 
John J. Hughes, Jr., President

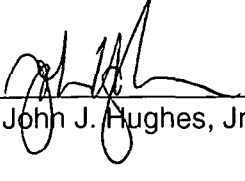
By: McNeil Company Incorporated,
a Nebraska limited liability company,
its member

By: 
Patrick G. McNeil, President

ZONE 5 ENTERTAINMENT, LLC,
a Nebraska limited liability company,

By: 
John J. Hughes, Jr., Manager

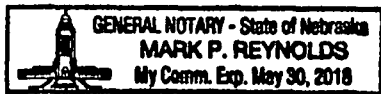
LOT 2 RESTAURANT, LLC,
a Nebraska limited liability company,

By: 
John J. Hughes, Jr., Manager

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 17th day of July, 2014, before me, a Notary Public in and for said county and state, personally appeared John J. Hughes, Jr., who executed the foregoing Declaration and acknowledged that he was duly authorized and did execute the same as President of Magnum Development Corporation, a Nebraska corporation, as a member of Zone 5, LLC, a Nebraska limited liability company, on behalf of the company.

GIVEN under my hand and Notarial Seal, this 17th day of July 2014.



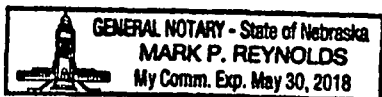
[Signature]
Notary Public

My Commission expires: 5/30/2018

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 17th day of July, 2014, before me, a Notary Public in and for said county and state, personally appeared Patrick G. McNeil, who executed the foregoing Declaration and acknowledged that he was duly authorized and did execute the same as President of McNeil Company Incorporated, a Nebraska corporation, as a member of Zone 5, LLC, a Nebraska limited liability company, on behalf of the company.

GIVEN under my hand and Notarial Seal, this 17th day of July 2014.



[Signature]
Notary Public

My Commission expires: 5/30/2018

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 17th day of July, 2014, before me, a Notary Public in and for said county and state, personally appeared John J. Hughes, Jr., who executed the foregoing Declaration and acknowledged that he was duly authorized and did execute the same as Manager of Zone 5 Entertainment, LLC, a Nebraska limited liability company, on behalf of the company.

GIVEN under my hand and Notarial Seal, this 17th day of July 2014.



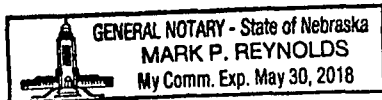
[Signature]
Notary Public

My Commission expires: 5/30/2018

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 17th day of July, 2014, before me, a Notary Public in and for said county and state, personally appeared John J. Hughes, Jr., who executed the foregoing Declaration and acknowledged that he was duly authorized and did execute the same as Manager of Lot 2 Restaurant, LLC, a Nebraska limited liability company, on behalf of the company.

GIVEN under my hand and Notarial Seal, this 17th day of July 2014.



[Signature]
Notary Public

My Commission expires: 5/30/2018

Exhibit A

Lots 1 through 7, Aksarben Village Replat 11, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

Exhibit B

Parking Garage Office Use Allocation

Zone 5 Lot	Current Member Name, Address and Email Address	Daytime Initial Office Allocation
Lot 1	Zone 5, LLC	234
Lot 2	Lot 2 Restaurant, LLC	--
Lot 3	Zone 5 Entertainment, LLC	--
Lot 4	Zone 5, LLC	48
Lot 5	Zone 5, LLC	--
Lot 6	Zone 5, LLC	20
Lot 7	Zone 5, LLC	512
Total		814