

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

228 B



FROM: TLMA - Transportation Department

SUBMITTAL DATE:  
September 22, 2010

SUBJECT: Approval of **PARCEL MAP 35933 (Conditional Use Permit 3573)**  
A Schedule "E" Subdivision in the Eastvale Area

**RECOMMENDED MOTION:** That the Board approve the Improvement Agreements and Securities as approved by County Counsel, approve the final map and authorize the Chairman to sign the Improvement Agreements and map for Parcel Map 35933.

**BACKGROUND:** This map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. The developer desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements and Securities which have been approved by County Counsel.

REVIEWED BY EXECUTIVE OFFICE  
DATE 9/22/10  
Tina Grande

FORM APPROVED COUNTY COUNSEL  
BY [Signature] DATE 9/10  
ELENA M. BOEVA Departmental Concurrence

Juan C. Perez  
Director of Transportation

Patricia Romo  
Deputy Director of Transportation  
HS:lf  
Submittals: Final Map  
Road/Drainage Imprv Agrmts  
Water System Imprv Agrmts  
Sewer System Imprv Agrmts  
Monumentation Agreements

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley  
Nays: None  
Absent: Tavaglione  
Date: September 28, 2010  
xc: Transp., COB

Kecia Harper-Ihem  
Clerk of the Board  
By: [Signature]  
Deputy

Dept's Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

Prev. Agn. Ref.

District: 2

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

2.13





## VICINITY MAP

PM 35933

SEC. 30 TWP. 2S. RNG. 6W.

Supervisory District: 2 (John Tavaglione)



**AGREEMENT  
FOR THE CONSTRUCTION OF ROAD/DRAINAGE IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and WLPX Eastvale, LLC, hereinafter called Contractor.

**WITNESSETH:**

**FIRST:** Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Parcel Map 35933 (Conditional Use Permit 3573)**, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to perform and complete, within **24** months from the date this agreement is executed, in a good and workmanlike manner, all road and drainage improvements in accordance with those Road Plans for said land division which have been approved by the County Director of Transportation, and are on file in the office of the Riverside County Transportation Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 461, as amended, which are hereby expressly made a part of this agreement. All the above required work shall be done under the inspection of and to the satisfaction of the County Director of Transportation, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **One million ninety-eight thousand eight hundred six and no/100 Dollars (\$1,098,806.00)**.

**SECOND:** Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the road and drainage improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

**THIRD:** County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

**FOURTH:** The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

9-28-10  
2.13

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County

Contractor

Construction Engineer  
Riverside County Transportation Dept.  
2950 Washington Street  
Riverside, CA 92504

WLPX Eastvale, LLC  
1156 N. Mountain Ave  
Upland, CA 91786

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

WLPX Eastvale, LLC, a Delaware limited liability Co.

By LEWIS OPERATING CORP - a California corporation

Its Sole Manager

Title \_\_\_\_\_

June 9, 2010

By  David L. Linden

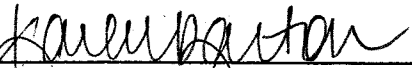
Title V.P., Director Asset Management

COUNTY OF RIVERSIDE

By   
MARION ASHLEY  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPLICATE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

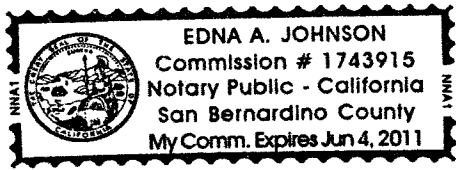
State of California

County of San Bernardino }

On June 9, 2010, before me, Edna A. Johnson, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared David L. Linden  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Edna A. Johnson  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

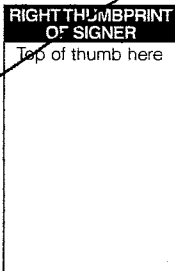
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

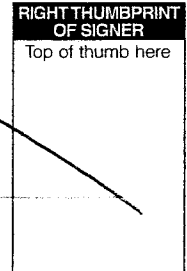
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**AGREEMENT  
FOR THE CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and WLPX Eastvale, LLC, hereinafter called Contractor.

**WITNESSETH:**

**FIRST:** Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Parcel Map 35933 (Conditional Use Permit 3573)**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within **24** months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by **Jurupa Community Services District** to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **Three hundred eighty thousand five hundred and no/100 Dollars (\$380,500.00)**.

**SECOND:** Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

**THIRD:** County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

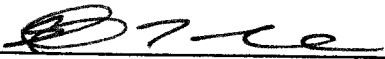
County  
Construction Engineer  
Riverside County Transportation Dept.  
2950 Washington Street  
Riverside, CA 92504

Contractor  
WLPX Eastvale, LLC  
1156 N. Mountain Avenue  
Upland, CA 91786

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

WLPX Eastvale, LLC - A Delaware limited liability co.  
By Lewis Operating Corp - a California corp.

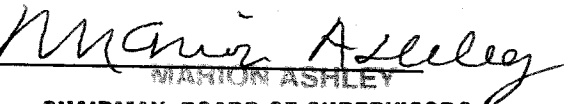
Title Its Sole Manager

By 

David L. Linden  
Title V.P., Director of Asset Management  
Authorized Agent

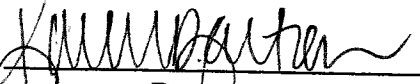
June 9, 2010

COUNTY OF RIVERSIDE

By   
MARION ASHLEY  
CHAIRMAN, BOARD OF SUPERVISORS

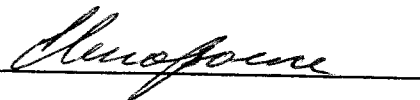
ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPPLICATE

Revised 09/29/09

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Bernardino }

On June 9, 2010, before me, Edna A. Johnson, Notary Public,  
Date Here Insert Name and Title of the Officer

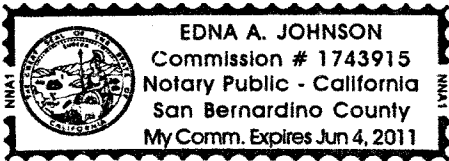
personally appeared David L. Linden  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Edna A. Johnson  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

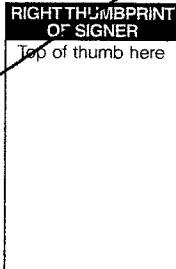
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

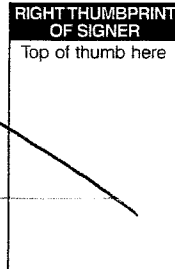
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_



**AGREEMENT  
FOR THE CONSTRUCTION OF SEWER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and WLPX Eastvale, LLC, hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Parcel Map 35933 (Conditional Use Permit 3573)**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within **24** months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by **JCSD** to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of **One hundred twelve thousand five hundred and no/100 Dollars (\$112,500.00)**.

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

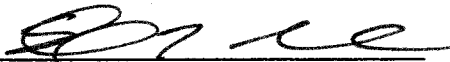
<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	WLPX Eastvale, LLC 1156 N. Mountain Avenue Upland, CA 91786

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

WLPX Eastvale, LLC - a Delaware limited liability c  
By Lewis Operating Corp - a California corp.  
Its Sole Manager

June 9, 2010


Title \_\_\_\_\_

By 

David L. Linden

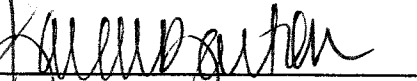
Title V.P. - Director of Asset Management  
Authorized Agent

COUNTY OF RIVERSIDE

By   
MARION ASHLEY  
CHAIRMAN, BOARD OF SUPERVISORS


ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPLICATE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Bernardino }

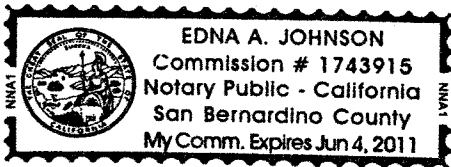
On June 9, 2010, before me, Edna A. Johnson, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared David L. Linden  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Edna A. Johnson  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

Signer Is Representing: \_\_\_\_\_

**AGREEMENT  
FOR THE PLACEMENT OF SURVEY MONUMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and WLPX Eastvale, LLC, hereinafter called Contractor.

**WITNESSETH:**

**FIRST:** Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Parcel Map 35933 (Conditional Use Permit 3573)**, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to set, within **24** months from the date this agreement is executed, in a good and workmanlike manner, all survey monuments and tie points and to furnish to the County Surveyor tie notes for said tract in accordance with the standards set forth in Riverside County Ordinance No. 461 and Section 8771 et seq. of the Business and Professions Code of the State of California. Contractor further agrees to pay, within 30 days of presentation to contractor of the final billing of any surveyor or engineer for work performed by him as provides for in Article 9 of Chapter 4, Division 2 of Title 7 of the Government Code of the State of California (commencing with Section 66495). Contractor further agrees that if payment to the surveyor or engineer is not made within 30 days, the surveyor or engineer notifies County that he has not been paid for setting the final monuments, and the Board of Supervisors, pursuant to Section 66497 of the Government Code, after providing Contractor with an opportunity to present evidence as to whether or not the surveyor or engineer has been paid, orders that payment be made by County to the engineer or surveyor, Contractor will, upon demand, and without proof of loss by County, reimburse County for any funds so expended. Notwithstanding any other provisions herein, the determination of County as to whether the surveyor or engineer has been paid shall be conclusive on Contractor, its surety, and all parties who may have an interest in the agreement or any portion thereof.

All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Surveyor, and shall not be deemed complete until approved and accepted as complete by the County. The estimated cost of said work and improvements is the sum of **Five thousand and no/100 Dollars (\$5,000.00)**.

**SECOND:** Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the County Surveyor. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the monuments, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

**THIRD:** County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.



NINTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County

Contractor

Construction Engineer  
Riverside County Transportation Dept.  
2950 Washington Street  
Riverside, CA 92504


WLPX Eastvale, LLC  
1156 N. Mountain Avenue  
Upland, CA 91786

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

WLPX Eastvale, LLC, a Delaware Limited Liability Co.

By LEWIS OPERATING CORP - a California corp.  
Its Sole Manager

Title \_\_\_\_\_

By   
David L. Linden

Title \_\_\_\_\_

V.P., Director Asses Management

June 9, 2010

COUNTY OF RIVERSIDE

By   
MARION ASHLEY

CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By   
Deputy

APPROVED AS TO FORM

County Counsel

By 

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPLICATE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

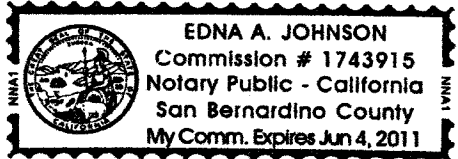
State of California

County of San Bernardino

On June 9, 2010, before me, Edna A. Johnson, Notary Public

personally appeared David L. Linden

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Edna A. Johnson

Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

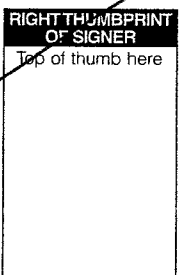
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

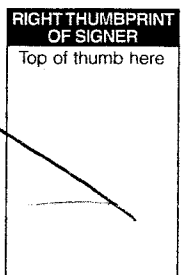
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_



# MEMORANDUM

---

RIVERSIDE COUNTY COUNSEL

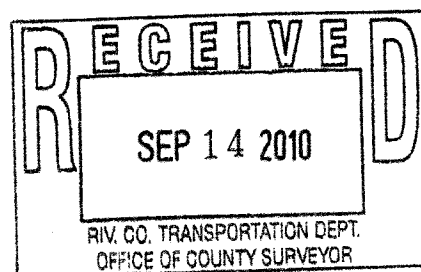
**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGE**

DATE: September 14, 2010

TO: KAMRYN SANCHEZ  
Planning Tech III

FROM: ELENA BOEVA *MD* *EMB*  
Deputy County Counsel

RE: Parcel Map No. 35933/CUP 3573  
Rick Manners



---

We have reviewed the Sample Grant Deed and Declaration of Restrictions and Easements (CC&R's) for Parcel Map No. 35933 submitted by Rick Manners, Lewis Retail Centers. As forwarded herewith, the documents are **APPROVED** as to form.

Accordingly, the requirement for a Declaration of CC&R's for Parcel Map No. 35933 is **SATISFIED**.

Enclosures

cc: Rick Manners (909) 912-8154

APPROVED

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
THIS GRANT DEED AND ALL  
TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(Above Space for Recorder's Use Only)

**GRANT DEED**

Documentary Transfer Tax not shown  
pursuant to Section 11932 of the Revenue  
and Taxation Code, as amended.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
WLPX EASTVALE, LLC, a Delaware limited liability company ("Grantor"), hereby GRANTS  
to \_\_\_\_\_ [*INSERT GRANTEE NAME*], the following described  
real property (the "Property") located in the County of Riverside, State of California:

SEE EXHIBIT "1" ATTACHED HERETO AND INCORPORATED  
HEREIN BY THIS REFERENCE

SUBJECT TO:

1. Taxes and assessments.
2. All other covenants, conditions, restrictions, reservations, rights, rights of way, easements, encumbrances, liens and title matters whether or not of record or visible from an inspection of the Property and all matters which an accurate survey of the Property would disclose.
3. That certain Declaration of Covenants, Conditions and Restrictions dated \_\_\_\_\_, 2010 and recorded on \_\_\_\_\_, 2010 as Instrument No. \_\_\_\_\_ in the Official Records of Riverside County, California.



APPROVED

RECORDING REQUESTED BY  
AND  
WHEN RECORDED RETURN TO:

WLPX Eastvale, LLC  
c/o Lewis Operating Corp.  
Attention: Legal Department  
1156 N. Mountain Avenue  
P. O. Box 670  
Upland, CA 91785-0670

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
EASTVALE SOUTH  
SEQ HAMNER & LIMONITE, MIRA LOMA, CALIFORNIA

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS.....	1
1.1. "Access Drives" .....	1
1.2. "Building" .....	1
1.3. "Building Area(s)" .....	1
1.4. "Building Envelope" .....	2
1.5. "Casualty" .....	2
1.6. "Common Area".....	2
1.7. "Common Area Expenses".....	2
1.8. "Common Lighting Period" .....	2
1.9. "Complete" or "Completed".....	2
1.10. "Constant Dollars".....	2
1.11. "County".....	3
1.12. "Declarant" .....	3
1.13. "Declaration" .....	3
1.14. "Default Rate" .....	3
1.15. "Developer" .....	3
1.16. "Floor Area" .....	3
1.17. "Food Use" .....	3
1.18. "Governmental Authority" .....	4
1.19. "Improvements" .....	4
1.20. "Law" .....	4
1.21. "Lien" .....	4
1.22. "Monument Signs" .....	4
1.23. "Mortgagee" .....	4
1.24. "Occupant" .....	4
1.25. "Official Records" .....	4
1.26. "Owner".....	4
1.27. "Parcel" .....	5
1.28. "Parcel Map" .....	5
1.29. "Permitted Closure" .....	5
1.30. "Pylon Sign" .....	5

	<u>Page</u>
1.31. "Record" .....	5
1.32. "Shall" .....	5
1.33. "Shopping Center" .....	5
1.34. "Sign Plan" .....	5
1.35. "Site Plan" .....	5
1.36. "State" .....	5
1.37. "Tenant" .....	5
1.38. "Utility Companies" .....	5
<b>ARTICLE 2. COVENANTS AND USE RESTRICTIONS/SHOPPING CENTER.....</b>	<b>5</b>
2.1. Use of Shopping Center .....	6
2.2. Office Uses.....	7
2.3. Sign Plan .....	7
2.4. Maintenance by Owner .....	7
2.5. Temporary Structures.....	7
2.6. Vehicles.....	8
2.7. Debris and Outside Storage.....	8
2.8. Pests .....	8
2.9. Compliance with Laws.....	8
2.10. Antennae .....	8
2.11. Drainage.....	8
2.12. Solar Energy Systems .....	8
2.13. Refrigeration Equipment.....	8
<b>ARTICLE 3. ARCHITECTURAL CONTROL.....</b>	<b>9</b>
3.1. Approval of Improvements .....	9
3.2. No Liability.....	10
<b>ARTICLE 4. DEVELOPMENT COVENANTS AND RESTRICTIONS .....</b>	<b>10</b>
4.1. Development and Operation of Shopping Center .....	10
4.2. Building Restrictions.....	10
4.3. Construction.....	11
<b>ARTICLE 5. COMMON AREAS .....</b>	<b>12</b>
5.1. Configuration of Common Area .....	12
5.2. Use of Common Area.....	12

	<u>Page</u>
5.3. Charge for Parking.....	13
5.4. Common Area Operation and Maintenance.....	13
5.5. Definition and Proration of Common Area Expenses.....	14
ARTICLE 6. EASEMENTS .....	16
6.1. Construction, Development, Dedication and Easements .....	16
6.2. Easements.....	16
6.3. Temporary License for Access.....	16
6.4. Right of Entry.....	17
6.5. Easements for Utilities .....	17
ARTICLE 7. INSURANCE.....	18
7.1. Owner's Insurance .....	18
7.2. Policy Form.....	19
7.3. Blanket Policies.....	19
7.4. Self Insurance.....	19
7.5. Increased Premiums Due to Use of Premises .....	19
7.6. Waiver of Subrogation.....	20
7.7. Failure by Owner To Maintain Insurance .....	20
ARTICLE 8. ENFORCEMENT .....	20
8.1. Enforcement Generally .....	20
ARTICLE 9. EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES .....	21
9.1. No Termination.....	21
9.2. Mortgage Protection.....	21
ARTICLE 10. COMPLIANCE WITH UNIFORM BUILDING CODE.....	21
ARTICLE 11. INDEMNIFICATION OF DECLARANT AND LIMITATION OF LIABILITY .....	21
11.1. Indemnity .....	21
11.2. Limitation of Liability.....	22
ARTICLE 12. GENERAL PROVISIONS.....	22
12.1. Amendments .....	22
12.2. Notices .....	23
12.3. Severability .....	24



	<u>Page</u>
12.4. Violation and Nuisance .....	24
12.5. Violation of Law .....	24
12.6. Construction of Document .....	24
12.7. Term .....	24
12.8. Plurals; Gender; Multiple Owners .....	24
12.9. Headings.....	24
12.10. Attorneys' Fees.....	24
12.11. Estoppel Certificate.....	24
12.12. Compliance With Hazardous Materials Laws.....	25
12.13. No Public Dedication .....	26
12.14. Covenants Running with the Land.....	26
12.15. Conflict with Leases.....	26
12.16. Dispute Resolution; Jury Trial Waiver .....	27
12.17. Required Provisions .....	28

**EXHIBIT LIST**

- A - Legal Description of Shopping Center
- B - Site Plan of Shopping Center

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

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made this 20<sup>th</sup> day of May, 2010, by WLPX EASTVALE, LLC, a Delaware limited liability company, hereinafter sometimes referred to as "Declarant".

RECITALS

- A. Declarant is the owner of all of the real property described in Exhibit "A" attached hereto and made a part hereof and intends to and does hereby establish, for its own benefit and for the mutual benefit of all future owners, tenants, or occupants of the "Shopping Center" (as defined below), and each part thereof, certain easements and rights in, over, and upon the Shopping Center, and certain mutually beneficial covenants, conditions, restrictions, and obligations with respect to the proper use, conduct, and maintenance thereof; and
- B. Declarant intends that the owners, mortgagees, occupants, and all other persons hereafter acquiring any interest in the Shopping Center, or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell, and convey their interests, subject to the rights, easements, covenants, conditions, restrictions, and obligations hereinafter set forth, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of such development and are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Shopping Center.

DECLARATION

Declarant, as owner of the Shopping Center and for the purposes above set forth, hereby declares that all of the Shopping Center, and each part thereof, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall constitute equitable servitudes on the Shopping Center, and which shall run with the Shopping Center and be binding on and inure to the benefit of all parties having any right, title, or interest therein, or in any part thereof, their heirs, successors, and assigns.

**ARTICLE 1.  
DEFINITIONS**

As used herein, unless otherwise specified or unless the context otherwise requires:

1.1. "**Access Drives**" shall mean such entrance and exit drives to and from the Shopping Center and Hamner Avenue and Limonite Avenue, as depicted on the Site Plan.

1.2. "**Building**" shall mean any structure enclosed by walls and having a roof supported by columns or walls.

1.3. "**Building Area(s)**" shall mean the portions of the Shopping Center designated as Buildings on the Site Plan not to exceed the Floor Area allocated for such Building as shown on the

Site Plan, except that while a Building is existing within an area, then the "Building Area" shall be delineated by the exterior walls. Building Areas are intended to be within Building Envelopes.

1.4. "**Building Envelope**" shall mean, for any Parcel, the area within the "Building Limit Lines" as shown on the Site Plan. Any Building may extend to such Building Limit Lines so long as the Building does not exceed the Floor Area allocated for such Building as shown on the Site Plan; provided, however, the Owner of the Parcel in question shall continue to have the right to relocate the Building Area within the boundaries of the Building Limit Lines so long as the Floor Area of each such Building does not exceed the Floor Area allocated for such Building as shown on the Site Plan.

1.5. "**Casualty**" shall mean damage to an improvement in the Shopping Center resulting from an event such as fire, earthquake, unusual weather causing sudden damage, thefts, riots, vandalism or terrorism.

1.6. "**Common Area**" shall mean all of the Shopping Center and its Improvements made available for the general and non-exclusive use of Declarant and other Owners as shown on the Site Plan, regardless of who may from time to time be the Owner of the Parcel subject to such designation, and any Drainage Improvements (as defined in Section 5.4(j) below), but not including the following: Building Area, sidewalks immediately adjacent to a Building, canopies of Buildings, areas immediately adjacent to a Building for truck parking and unloading, drive-thru lanes and related drive-thru improvements, or trash storage, supports and appurtenances that extend from a Building into Common Area, or any Improvements installed by an Owner outside of the Owner's Building, whether with or without Declarant's knowledge or consent or any portion of the Shopping Center that is to be excluded from Common Area pursuant to any lease executed prior to the Effective Date.

1.7. "**Common Area Expenses**" shall have the meaning assigned to it in Section 5.5 below.

1.8. "**Common Lighting Period**" shall have the meaning assigned to it in Section 5.4(f).

1.9. "**Complete**" or "**Completed**" shall mean when (a) all of the work shown on applicable plans has been fully performed in substantial conformance with such plans and the appropriate architect has issued a certificate to such effect; (b) the work has been accepted as complete, after all necessary final inspections, by all Governmental Authorities having jurisdiction, and all necessary occupancy permits, if any, which may be applicable have been issued; (c) the work shown in the plans is fully operational (with only minor non-substantive punch-list type exceptions, if any) and may be used in the conduct of the operations of the Shopping Center; and (d) all debris, construction materials, and equipment related to such work have been removed from the Shopping Center, except for materials stored in appropriate staging areas.

1.10. "**Constant Dollars**" shall mean the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6th) calendar year following the date of this Agreement, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "**Base Index Number**" shall be the level of the Index for the month and year during which this Agreement is dated; the "**Current Index Number**" shall be the level of the Index for the month which this Agreement is dated of the year preceding the adjustment year; the "**Index**" shall be the Consumer Price Index for

all urban consumers, U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (Base Year 1982-84=100), or any successor index thereto as provided in this definition. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Declarant shall, in the exercise of its commercially reasonable discretion, substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.11. "**County**" shall mean the County of Riverside, California.

1.12. "**Declarant**" shall initially mean WLPX Eastvale, LLC, a Delaware limited liability company. WLPX Eastvale, LLC shall have the right to delegate or assign its rights and obligations as Declarant to any party that acquires a Parcel. Such delegation or assignment shall be effective as to all Owners upon receipt of a written notice of the same from Declarant. In addition, WLPX Eastvale, LLC may withdraw from serving as Declarant by providing a written notice to each of the other Owners. In the event of any such delegation, assignment or withdraw by WLPX Eastvale, LLC, an addendum to this Declaration shall be recorded in the Official Records reflecting that the same has occurred and identifying the new Declarant, if any. After the date of any such delegation, assignment or withdrawal, WLPX Eastvale, LLC shall have no further duties or obligations as Declarant under this Declaration. If WLPX Eastvale, LLC withdraws and does not delegate or assign its rights and obligations, then, the Owner of Parcel 2 shall automatically become the Declarant.

1.13. "**Declaration**" shall mean this instrument.

1.14. "**Default Rate**" shall mean the annual rate of interest which is the lesser of (a) the highest rate permitted by Law or (b) five percent (5%) above the reference rate of Wells Fargo Bank or its successor or, if there is no such reference rate, then the reference rate of any regional bank or similar institution chosen by Declarant.

1.15. "**Developer**" shall mean any individual or entity, other than Declarant, who acquires title to any Parcel from Declarant and who does any grading or constructs any "Improvement(s)," as herein defined, or causes any grading or construction of Improvement(s) to be done, on any portion of the Shopping Center.

1.16. "**Floor Area**" shall mean the total floor area of a Building. Floor Area shall not include any mechanical penthouse, mezzanine area not used for retail sales, loading dock, the upper levels of any multiple-deck storage area, truck parking or unloading areas, trash storage areas, or sidewalk area. For purposes of calculating the Floor Area of a Building, any permanent merchandising area adjacent to a Building other than those permitted pursuant to Subsection 5.2(b) (Common Area) shall be included in the Floor Area of that Building.

1.17. "**Food Use**" shall mean any establishment serving prepared food for on- or off-premises consumption, including, but not limited to, a sit-down, fast food or take-out type restaurant, bagel shop, sandwich shop, cookie shop, donut shop, ice cream shop or frozen yogurt shop, pizza parlor, Chinese restaurant or sushi bar, dinner house, steak house, bar and grill, cafeteria or coffee shop.

1.18. "**Governmental Authority**" shall mean any governmental authority, agency, department, district, commission, board or instrumentality of the United States, the State of California, or any political subdivision thereof having jurisdiction over the Shopping Center.

1.19. "**Improvements**" shall mean Buildings, garages, parking areas, streets, roads, drains, utilities (including, without limitation, water, sewer, gas, electric, telephone and cable lines), driveways, walkways, fences, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every kind, nature, or description.

1.20. "**Law**" shall mean any federal, state, or local statute, rule, regulation, requirement, initiative, ordinance, action, or policy, and common law.

1.21. "**Lien**" shall mean both voluntary and involuntary liens.

1.22. "**Monument Signs**" shall mean the monument signs installed at the locations shown on the Site Plan, having the design and size specified in the Sign Plan.

1.23. "**Mortgagee**" shall mean the beneficiary of a recorded deed of trust or the holder of a recorded mortgage.

1.24. "**Occupant**" shall mean the Owner, its Tenant, or any other person(s) or entity(ies) in possession of all or part of a Parcel.

1.25. "**Official Records**" shall mean the Official Records as maintained by the County.

1.26. "**Owner**" shall mean the person(s) or entity(ies) whose estates or interests, individually or collectively, taken together form the fee ownership of a Parcel as shown in the Official Records (including, without limitation, the Declarant and any Developer). This definition excludes Tenants and also those persons or entities having an interest in a Parcel merely as security for the performance of an obligation or as purchasers under executory contracts of sale unless and until such persons or entities obtain title to the Parcel as shown in the Official Records. No Occupant of a Parcel shall have any rights or privileges with respect to the Parcel or to the Shopping Center that are greater than those of the Owner of the Parcel, notwithstanding any agreement between the Owner and the Occupant to the contrary. An Owner and any Occupant of such Owner's Parcel may allocate between themselves by written agreement signed by both parties with a copy delivered to Declarant, all or any portion of the obligation to satisfy the Owner's insurance and maintenance requirements imposed in Sections 2.4, 7.1, 7.2, 7.4 and 7.6 of this Declaration (the "I&M Obligations"), or other obligations under this Declaration to the extent such agreement does not affect the other Owners, and in such event Declarant may enforce directly against the Occupant the I&M Obligations allocated to it. Each Owner shall remain jointly and severally liable with the Occupant of its Parcel for the satisfaction of I&M Obligations allocated to the Occupants of such Owner's Parcel. All prohibitions, covenants, restrictions, and reservations set forth in this Declaration which apply to an Owner of a Parcel shall also apply to and be enforceable directly by and against any Occupant of the Parcel and to any other person asserting a right or interest in such Parcel by, through, or from its Owner, except for I&M Obligations, which shall apply solely to the Owner unless allocated by written agreement to an Occupant as permitted by this definition. Upon the transfer by an Owner of its entire interest in fee title to a Parcel as shown in the Official Records, the transferor shall cease to be an Owner and its transferee shall thereby immediately become an Owner, subject to all liabilities and obligations as well as the benefits of the transferor's status as

Owner. The transferor shall continue to be liable for any obligations such transferor incurred hereunder which arose on or before the effective date of such transfer but shall be released automatically from liability accruing or based upon events occurring after the transfer.

1.27. "**Parcel**" shall mean one or more of those legally described parcels Recorded as Parcels 1 through 10, inclusive, of the Parcel Map.

1.28. "**Parcel Map**" shall mean, Parcel Map 35933, recorded in Book \_\_\_\_\_ of Maps, starting at Page \_\_\_\_\_ of the Official Records, on \_\_\_\_\_.

1.29. "**Permitted Closure**" shall mean cessation of operations as a proximate result of a Casualty, condemnation, or remodeling diligently pursued (including a remodeling in connection with an assignment or subletting).

1.30. "**Pylon Sign**" shall mean that certain multi-tenant pylon sign to the extent provided for in the Sign Plan.

1.31. "**Record**" shall mean the act of recording a document in the Official Records in accordance with applicable Law.

1.32. "**Shall**" is mandatory and not merely directory.

1.33. "**Shopping Center**" shall mean all of the real property described in Exhibit "A" attached hereto and made a part hereof.

1.34. "**Sign Plan**" shall mean that sign criteria or other sign plan regulating the signage in, on, and about the Shopping Center as approved by Declarant and, to the extent required by applicable Law, the County from time to time.

1.35. "**Site Plan**" shall mean the Site Plan attached to and made a part of this Declaration as Exhibit "B".

1.36. "**State**" shall mean the State of California.

1.37. "**Tenant**" shall mean any tenant, subtenant, assignee or transferee under a written lease or similar type agreement for rental of all or a portion of a Parcel or a Building within the Shopping Center executed on, before or after the date this Declaration is recorded in the Official Records.

1.38. "**Utility Companies**" shall mean those companies authorized by the County and/or the State to install, operate, and maintain water, gas, electric, telephone, and/or cable television lines.

The above definitions shall apply to all derivatives of the words and terms so defined appropriately modified for the word form of the derivative.

## ARTICLE 2. COVENANTS AND USE RESTRICTIONS/SHOPPING CENTER

The following covenants and restrictions shall apply to the Shopping Center:

## 2.1. Use of Shopping Center.

(a) No portion of the Shopping Center shall be used for any of the following purposes except as permitted by Declarant in writing in its sole and absolute discretion: a flea market; cemetery; funeral home or mortuary; adult book store, adult theatre or any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so called "head shop"; off track betting parlor; junk yard; gun range or the sale of guns as a primary use; recycling facility (except as may be required by Law) or stockyard; a fuel station (except that a fuel station shall be permitted on Parcel 6); automobile repair shop including a body or fender shop; motor vehicle or boat dealership or storage facility; a mini storage or self storage facility; industrial, residential, lodging or manufacturing uses; or house of worship; a surplus store; or a business selling so called "second hand" goods (the term "second hand" shall mean stores which sell goods primarily as a service to the public rather than to a retail customer for profit, such as, by way of example, "Goodwill Stores"); a dollar store (i.e., a store selling substantially all of its merchandise at defined price points such as ninety-nine cents (\$0.99), one dollar (\$1.00), five dollars (\$5.00) or any single dollar amount); a disco or dance hall, amusement arcade (the operation of a play land, play place or play area by McDonald's on its leased space shall be expressly permitted and shall not be a violation of this Declaration provided that the play land, play place or play area is consistent with other such play lands, play places or play areas in McDonald's restaurants located in Southern California), pawn shop, dry cleaning facility with on-premises dry cleaning plant that uses Hazardous Substances within its premises in the Shopping Center, massage parlor, any industrial use (including, without limitation, any manufacturing, smelting, rendering, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, any use which in Declarant's reasonable judgment is inconsistent with a first class retail shopping center.

(b) No portion of the Shopping Center shall be used for a business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; creates unusual fire, explosive or other hazards; or materially increases the rate of insurance for any other Owner or Tenant; provided, however, the operation of a typical supermarket or fuel station shall not be deemed to be in violation of this Section. Notwithstanding the preceding terms, a quick service restaurant with a drive-thru facility, including speakers, and outdoor trash enclosure shall not be a violation of this Section 2.1(b).

(c) No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Shopping Center, nor shall oil wells, tanks, tunnels, or mineral excavation or shafts be permitted upon the surface of any portion of the Shopping Center, or within five hundred (500) feet below the surface of any portion of the Shopping Center. No derrick or other structure designed for use in boring for water, oil, natural gas or other minerals shall be erected, maintained or permitted on any portion of the Shopping Center; provided, however, that the operation of a fuel station shall not be deemed to be in violation of this Section.

(d) No merchandise or substance shall be permitted in or about the Shopping Center and no act shall be permitted in or about the Shopping Center which will (i) cause or threaten the cancellation of any insurance covering the Common Area or any portion of the Shopping Center or (ii) increase the insurance rates applicable to the Common Area or any portion of the Shopping Center over the rate which would otherwise apply, unless the responsible party agrees to pay the increased cost.

(e) By written notice to all Owners, Declarant may, from time to time, provide one or more employee parking area(s) in the portions of the Common Area, effective upon the first day that the delivery of the notice has been effected on all of the Owners. In such event, all Owners shall inform their respective Tenants, and all Owners and Tenants shall use all reasonable efforts to cause all employees in the Shopping Center to park in such designated area(s).

(f) This Declaration is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Parcel. However, nothing in this Declaration shall prevent an Owner and its Tenant from agreeing among themselves upon a covenant to operate or a recapture provision.

2.2. Office Uses. No portion of the Shopping Center shall be used for primarily office purposes. Notwithstanding the foregoing, so called "service office uses" which include the provision of services to the general public, such as, but not limited to, banks, real estate brokerages, architects, insurance brokers, escrow offices, or travel agencies shall be permitted in any Building within the Shopping Center. In addition, incidental office uses by retail Tenants shall be allowed in the Shopping Center.

2.3. Sign Plan.

(a) No exterior sign, picture, advertisement, or notice of any kind shall be displayed, inscribed, painted on, or affixed to any part of the Shopping Center except as permitted by and in conformance with the Sign Plan or as otherwise permitted by Declarant. Any change or amendment to the Sign Plan must be approved by the Declarant and, to the extent required by Law, the County.

(b) Declarant may, but shall not be obligated to, remove any promotional devices and signs which do not conform with the provisions of the Sign Plan or which are located within the Shopping Center at places not permitted by the Sign Plan.

2.4. Maintenance by Owner. Except as otherwise expressly provided in this Declaration, including, without limitation, the terms of Section 5.4 hereof regarding the operation and maintenance of the Common Area, each Owner shall maintain the portions of his Parcel that are not Common Areas in a clean and attractive condition. Without limiting the generality of the foregoing, each Owner shall:

(a) keep his Parcel free from rubbish, litter and weeds;

(b) maintain in good condition and repair and adequately paint or otherwise finish all Improvements located or from time to time placed upon his Parcel to the extent not maintained by Declarant; and

(c) maintain in good condition and repair all paved surfaces on the Parcel to the extent not maintained by Declarant.

2.5. Temporary Structures. No structure of a temporary character, trailer, mobile, modular, or prefabricated home, tent, shack, barn, or any other out-building shall be placed on any Parcel, either temporarily or permanently, without the prior written approval of the Declarant.



2.6. Vehicles. No stripped-down vehicle, partially wrecked vehicle, inoperable vehicle, junk motor vehicle, or sizeable part thereof, shall be permitted to be parked on any Parcel in such a manner as to be visible to the occupants of other Parcels or to the users of any nearby street. There shall be no restoring or repairing of vehicles on any portion of the Shopping Center or nearby street except in such portions of the Shopping Center, if any, where the Declarant permits such restoring or repairing of vehicles to be conducted as a business.

2.7. Debris and Outside Storage. All rubbish, trash and garbage shall be regularly removed from each Parcel and shall not be allowed to accumulate thereon. All refuse containers, storage areas, and machinery and equipment shall be obscured from view of other Parcels, and neighboring property and streets by a fence or appropriate screen.

2.8. Pests. No Owner shall permit anything or condition to exist upon any portion of the Shopping Center which shall induce, breed, or harbor infectious plant diseases or noxious insects or vermin.

2.9. Compliance with Laws. Each Owner shall promptly comply with all Laws, including, without limitation, those Laws applicable to the use and occupancy of, and the construction and maintenance of, any Buildings or other Improvements.

2.10. Antennae. No radio station or shortwave operators of any kind shall operate from any Parcel or any other portion of the Shopping Center without the prior written approval of the Declarant. No exterior radio antenna, "C.B." antenna, television antenna, or other antenna or any cellular tower of any type shall be erected or maintained anywhere in the Shopping Center without the prior approval of the County, if needed, and without the prior written approval of Declarant. However, subject to Article 3 and Section 4.2 below, each Owner may install a satellite dish or similar equipment on its Building for the purpose of facilitating the operation of its business in its Parcel(s) (including, but not limited to, communicating with the accounting function of the one or more of its Occupants) so long as its design and location meet the requirements of the County.

2.11. Drainage. There shall be no interference with the established drainage pattern over any Parcel in the Shopping Center. For the purpose hereof, the "established" drainage pattern for a particular Parcel is the pattern which exists at the time of the sale of such Parcel by Declarant or a Developer to any person or entity.

2.12. Solar Energy Systems. Subject to Article 3 and Section 4.2 below, each Owner may install a solar energy system on its Parcel so long as its design and location meet the requirements of the County, if any.

2.13. Refrigeration Equipment. Subject to Article 3 and to Section 4.2 below, each Owner may install refrigeration equipment on their Parcels, including without limitation on Building roofs so long as its design and location meet the requirements of the County, if any.

**ARTICLE 3.  
ARCHITECTURAL CONTROL**

**3.1. Approval of Improvements.**

(a) No Improvements shall be constructed, erected, or installed on any Parcel by any Occupant until the construction plans and specifications and a plan showing the location and elevation or other details of such Improvements have been approved by Declarant as provide in Section 3.1(c) below, such approval not to be unreasonably withheld or conditioned. All Improvements shall be consistent with the Site Plan. Such approval may, but shall not be required to, include, without limitation, the review of materials, exterior colors, harmony of external design with existing structures, the Building bulk or mass of the Buildings or structures, the location with respect to topography and finished grade elevation, and the harmony of landscaping with existing landscaping and the natural setting and surroundings. Further, any alteration, addition to, remodeling, or reconstruction of any Improvements at any time which involves any significant change in the exterior appearance or location thereof shall likewise be subject to the prior written approval of Declarant provided that Declarant's approval rights under the preceding sentence shall not restrict the rights of the Occupant of Parcel 1 to make alterations to the exterior of the Building located on Parcel 1 in accordance with such Occupant's lease to the extent such lease is executed prior to the recordation of this Declaration. All Improvements, or alterations thereto, shall be constructed only in accordance with the plans and specifications approved by Declarant as required in this Section 3.1.

(b) All construction work in the Shopping Center shall be in accordance with the building elevations approved by the County and building permits based thereon.

(c) (i) Prior to constructing, erecting, or installing any Improvements on its Parcel, each Owner shall submit the construction plans and specifications and the plans showing the locations and elevations of such Improvements (in either case, "Plans") to Declarant for its approval consistent with Section 3.1(a) above. Declarant shall have fourteen (14) days after its receipt of any Plans to approve, disapprove, or comment on such Plans in writing with reasonable specificity to such Owner. If the Plans are approved by Declarant within such fourteen (14)-day period, such Owner will proceed with obtaining all necessary governmental approvals of such Plans and thereafter proceed with its construction, erection, or installation of the Improvements described in such Plans. If, on the other hand, Declarant, in writing, disapproves or otherwise comments on such Plans within such fourteen (14)-day period, then such Owner shall modify its Plans accordingly, and resubmit such modified Plans to Declarant and this procedure shall continue to be followed until Declarant finally approves such Plans.

(ii) If, during any part of this process, Declarant does not respond in writing to such Owner within the fourteen (14) day response periods, such Owner shall re-submit such Plans with the following notice in all capital letters: "SECOND NOTICE: THE ENCLOSED CONSTRUCTION PLANS AND SPECIFICATIONS AND/OR LOCATION AND ELEVATION PLANS SHALL BE DEEMED APPROVED IF NO WRITTEN RESPONSE FROM DECLARANT IS RECEIVED BY OWNER WITHIN SEVEN (7) DAYS AFTER DECLARANT'S RECEIPT OF THIS NOTICE AND ITS ENCLOSURES." If Declarant still does not approve, disapprove, or otherwise comment to such Plans in writing to such Owner within such seven (7)-day period, then such Plans shall be deemed approved by Declarant for purposes of Section 3.1(c)(i). However, if Declarant responds in writing to such Owner within such seven (7)-day period, the procedure

provided in Section 3.1(c)(i) above shall be followed as if Declarant had properly responded within the initial fourteen (14)-day period.

3.2. No Liability. Declarant shall not be liable in any manner whatsoever to any person submitting any plans or specifications for approval or to any Owner or Owners or to any Developer or Developers of any Parcel, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans or specifications. Any person or entity acquiring the title to any Parcel, or any person or entity submitting plans or specifications to Declarant for approval, by so doing shall be deemed to have agreed and covenanted that he, she, or it will not bring any action or suit against Declarant arising from such plans or specifications. Additionally, Declarant shall not be liable to any Owner, Developer, or any other person for any loss, damage, or injury arising out of or in any way connected with the acts or omissions of Declarant under this Article 3, including, without limitation, any loss or damage due to design concepts, aesthetics, errors or defects, whether patent or latent, shown or omitted, on any plans or specifications submitted for their review, or any buildings or structures erected therefrom. The approval of any plan or design shall not be deemed to be an approval of any plan or design from the standpoint of structural safety or conformance with any zoning requirements, setback restrictions or other applicable rules or regulations of any kind.

**ARTICLE 4.  
DEVELOPMENT COVENANTS AND RESTRICTIONS**

4.1. Development and Operation of Shopping Center. The Shopping Center shall be developed, operated, and maintained in accordance with the Site Plan as an integrated retail shopping center which will attempt to attract a combination of merchants, service providers, and office tenants (as provided herein) which (a) provide in the aggregate a balanced and diversified grouping of retail stores, service providers, and office tenants, and (b) fixturize, decorate, and maintain their respective premises in a first class manner, having regard for the general standards of appearance prevailing in the Shopping Center. Unless otherwise provided for in this Declaration, all Buildings in the Shopping Center will be occupied only by businesses for the retail selling of goods, wares, merchandise, and services meeting the requirements of this Declaration.

4.2. Building Restrictions.

(a) No Building shall be constructed or located on any part of the Shopping Center other than within Building Envelopes. All Buildings constructed, reconstructed, or replaced in the Building Envelopes shall contain one story and shall have the following maximum heights (including architectural elements, as provided for below, designed for decorative or, in the case of an otherwise permitted satellite dish or other functional equipment, screening purposes) unless otherwise approved by Declarant in writing:

<u>Building Area</u>	<u>Maximum Building Height</u>	<u>Maximum Height of Architectural Elements</u>
Parcel 1 (Drug Store Parcel)	30 Feet	37 Feet
All other	26 Feet	36 Feet

No additional stories shall be added to any Building in the Shopping Center without obtaining express written consent of Declarant, which consent may be granted or denied in Declarant's sole discretion.

(b) In determining the maximum height of any Building, the Building shall be measured from the top of the floor covering on the ground floor slab to the highest point on the functional portion of such Building but shall not include any architectural element. Architectural elements shall not exceed the height limit set forth above. Notwithstanding an Owner's right to construct a Building anywhere within the Building Areas shown on the Site Plan, no Building shall have a greater Floor Area than shown on the Site Plan for such Building.

4.3. Construction. All construction, alteration, or repair work undertaken by, or on behalf of, any Owner shall, following commencement of such work, be prosecuted diligently to completion in accordance with the requirements of this Declaration. Specifically:

(a) All areas on which such work has commenced but is not Complete shall be properly maintained in a clean, attractive and safe condition, free of debris and trash. Until construction is inside an enclosed Building, such areas shall be enclosed or surrounded by an adequate fence or barrier. Such work shall be performed in a manner which protects customers, employees, and other business invitees of Occupants from construction hazards and protects the construction from unauthorized intruders.

(b) All such work shall be performed diligently and in such a manner as to minimize interference with the operation of Owners and other Occupants.

(c) All such work shall be performed in accordance with all applicable Laws and requirements of any Governmental Authority.

(d) Any construction or maintenance activity within the Common Area shall be done only with the prior approval of the Declarant which may be withheld or conditioned in Declarant's sole and absolute discretion since the Declarant is charged by this Declaration with the management, supervision, and control of the Common Area.

(e) Each Owner will keep, or arrange to keep, the Shopping Center free and clear of all mechanic's liens or other liens on account of work done for such Owner or persons claiming under such Owner. Each Owner shall have the right to contest the validity or amount of any such lien or claimed lien affecting its Parcel(s); provided, however, that upon any other Owner's reasonable request, the contesting Owner shall give reasonable security to the requesting Owner to prevent any sale, foreclosure, or forfeiture of the requesting Owner's Parcel and/or the Improvements thereon by reason of such nonpayment, and the contesting Owner, upon thirty (30) days written notice from the requesting Owner, shall either remove any such lien, or cause such lien to be bonded over.

(f) The Owner undertaking such work shall repair, at its own cost and expense, any and all damage caused by such work to any other Parcel(s) and Improvement(s) and shall restore the affected Parcel(s) and Improvement(s) to the condition which is equal to or better than the condition which existed prior to the beginning of such work.

**ARTICLE 5.  
COMMON AREAS**

5.1. Configuration of Common Area. Subject to the specific rights of Owners under this Declaration, the Common Area shall be under the management, supervision, and control of Declarant; provided, however, Declarant may grant certain approval and maintenance and other rights regarding all or part of its general control of the Common Area to certain Occupants.

5.2. Use of Common Area.

(a) Except for any purpose not in furtherance of the operation of the Shopping Center and subject to Declarant's rights of management, supervision, and control, the Common Area may be used for any of the following uses:

(i) Parking of motor vehicles, and pedestrian and vehicular ingress and egress by Declarant and other Occupants of the Shopping Center and agents, employees, customers, and other invitees of any of them, to and from buildings, Common Area and adjacent public streets;

(ii) Parking stalls, private streets, sidewalks, walls, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, landscaped areas, traffic and parking lighting facilities and the Monument Signs and Pylon Sign as shown on the Site Plan with appropriate underground electrical connections, and all things incidental thereto;

(iii) Utility lines and facilities serving buildings and/or the Common Area which shall, if reasonably possible, be underground. Any above-ground utility lines or facilities must be located behind the buildings and must allow free access for trucks to and from all loading areas;

(iv) Ingress and egress of delivery and service vehicles to and from the Shopping Center or any portion thereof and adjacent public streets. Such vehicles may only be parked in unloading or truck parking areas;

(v) Delivery of goods, wares, merchandise and the rendition of services to the Occupants of the Shopping Center;

(vi) Perimeter walls and fences shown on the Site Plan;

(vii) Other uses expressly permitted in writing by Declarant.

(b) Subject to receiving Declarant's prior written consent, the Common Area immediately contiguous to any Building Area not used for parking or access may be used for the following:

(i) Installation, removal, repair, and maintenance of building canopies extending from any Building Area over pedestrian sidewalks and the Common Area not more than ten (10) feet, together with appropriate canopy supports;

(ii) Installation, removal, repair, and maintenance of mail boxes, hose bibs, standpipes, fire hose connections, downspouts, yard or floodlights, and subsurface building foundations for the benefit of the Building Area;

(iii) Construction and use of loading ramps, docks, trash rooms, trash bins, or other similar ancillary improvements which shall be located in the service area to the rear of and adjacent to the Building Area;

(iv) Temporary erection of ladders, scaffolding and store front barricades during construction, remodeling or repair of Buildings, and building appurtenances; and

(v) Subject to receiving Declarant's prior written approval, temporary or seasonal displays/outdoor sales areas but only on sidewalks adjacent to Buildings and not in any parking areas.

(c) The Common Area shall be used reasonably so as not to interfere with customer parking, and, except as set forth in Section 5.2(b)(v) above, shall not be used for outdoor sales areas.

(d) Any undeveloped Building Area may, at Declarant's option, be Common Area, in which event it shall be so improved and operated, or it may remain undeveloped, in which event it will be rough graded and maintained in a clean, attractive, and safe condition.

5.3. Charge for Parking. No charge of any kind shall ever be made for ingress to, egress from, or parking in the Shopping Center, unless ordered by a Governmental Authority. If so ordered, to the extent permitted by Law, any such charge shall not be collected from customers and invitees but shall be prorated to the Occupants and paid by them as a Common Expense. If the Governmental Authority does not permit such a treatment of the charge, but instead requires that it be collected from customers or invitees, the Declarant shall collect such charge and shall credit the amount received, less collection expenses and any amounts required to be paid over to any Governmental Authority or to any third party by direction of any Governmental Authority, against Common Expenses.

5.4. Common Area Operation and Maintenance. Declarant shall operate and maintain the Common Area in good condition and repair. Declarant's obligations hereunder shall include, but not be limited to, the following:

(a) Removal of all papers, debris, dirt and refuse from the Common Area as often as necessary.

(b) Maintenance of parking areas properly designated and painted with directional signs and striping.

(c) Maintenance of all paving and surface areas in level and smooth condition, evenly covered with a surfacing material of equal or superior quality to the kind originally installed thereon.

(d) Sweeping of the Common Area by mechanical sweeper as often as necessary and steam-pressure cleaning of the sidewalks as needed.

(e) Maintenance of all lights and light standards in the Common Area, and of the Pylon Sign and the Monument Signs.

(f) Lighting of the Common Area, which shall include the main lighting of the Common Area, with an average of a three (3) foot candle level of light in the Shopping Center daily during the hours of darkness until sixty (60) minutes after the last Occupant within that portion of the Common Area where the lighting is controlled by Declarant closes for business (the "Common Lighting Period") and security lighting in all other hours of darkness. Additionally, if the site work performed in the course of the construction of the Shopping Center shall have included separate controls for the control area (a "Control Area") of any Occupant which is part of the Common Area, such Occupant shall have the right to keep such Control Area lighted after the expiration of such Common Lighting Period (in which event such Occupant shall pay all costs thereof in excess of the costs of security lighting but shall not be responsible for any other Common Area lighting costs for such Common Lighting Period so long as the charge for such Occupant's extra use can be reasonably and accurately determined).

(g) Maintenance, care and replacement of all irrigation systems (including automatic sprinkler systems) and of shrubbery and other landscaping upon the Shopping Center and adjoining parkways.

(h) Reasonable supervision and security in the Common Area.

(i) Repairing promptly any damage or deterioration to the Common Area (including, without limitation, the abatement of graffiti on all Buildings, trash enclosures, and walls).

(j) Maintaining, repairing and replacing, when necessary all Common Area storm drains, sewers and other utility lines (but excluding separate utility lines which only serve the Occupants of a particular Parcel) not dedicated to a Utility Company. In particular, the Declarant shall regularly maintain and keep in good repair any catch basins, pipes, surface drainage ditches, gates, filters, devices or other drainage improvements located upon the Common Area (collectively, "Drainage Improvements") that accept the drainage of storm water within the Common Area. All Drainage Improvements shall be inspected, and if necessary, cleaned no less than annually prior to October 15<sup>th</sup> each year. The maintenance and repair of the Drainage Improvements located on such Common Area shall be completed in accordance with the Water Quality Management Plan ("WQMP") for the Shopping Center and such WQMP shall identify the Best Management Practices ("BMPs") for the Shopping Center.

Notwithstanding anything in this Declaration to the contrary, Declarant may delegate its management, supervision, and control of the Shopping Center, including the Common Area, to (a) an Owner with respect to such Owner's Parcel and (b) a third party (the "Manager"), whether or not such Manager is an affiliate of Declarant.

#### 5.5. Definition and Proration of Common Area Expenses.

(a) The term "**Common Area Expenses**", as used in this Declaration shall mean all costs and expenses incurred by Declarant or the Manager with respect to operating, maintaining, managing, policing, insuring, repairing, reconstructing, or replacing the Common Area (collectively, the "Common Area Expenses") not otherwise reimbursed by insurance proceeds, including, without limitation, all amounts incurred by Declarant or the Manager for operating, maintaining, managing, policing, insuring, replacing and repairing of the Common Area pursuant to this Declaration; and all costs incurred by Declarant in connection with (i) remodeling of the Common Area, (ii) maintaining and repairing the Improvements from time to time within the Common Area, and (iii) repairing,

reconstructing, replacing, and restoring any damaged or destroyed Improvement in the Common Area; any fee paid to a Manager; and a sum payable to Declarant for administration and overhead in an amount equal to ten percent (10%) of all the foregoing costs and expenses for the applicable year.

(b) From and after the date any Owner takes title to its Parcel, such Owner shall pay to Declarant, on the first day of each calendar month, an amount estimated by Declarant to be the monthly amount of such Owner's Proportionate Share of Common Area Expenses. Each Owner's "Proportionate Share" of Common Area Expenses shall be computed by multiplying the Common Area Expenses by a fraction, the numerator of which shall be the square footage of any building located on a Parcel from time to time and the denominator of which shall be the sum of the aggregate square footage of all buildings located from time to time in the Shopping Center. An Owner shall not be obligated to contribute to Common Area Expenses until construction of the building on its Parcel has commenced (as evidenced by commencement of grading). For the purposes hereof, the term "square footage" of any building located on a Parcel shall mean the area of the building as shown on the final plans for such building as approved by the County for the building permit for such building and reasonably approved by Declarant. Within one hundred twenty (120) days following the end of each calendar year or fiscal year, at Declarant's option, Declarant shall furnish each Owner a reconciliation statement covering the period just expired, showing the actual Common Area Expenses for that period, the amount of such Owner's share of Common Area Expenses for that period and the payments made by such Owner during that period for Common Area Expenses. If such Owner's share of the actual Common Area Expenses exceeds such Owner's total payments of Common Area Expenses for a period, then that Owner shall pay to Declarant the deficiency within thirty (30) days after receipt of the reconciliation statement. Failure by Declarant to furnish such Owner the reconciliation statement within such one hundred twenty (120)-day period shall not constitute a waiver of such Owner's obligation to pay any deficiency. If such Owner's payments for the period exceed such Owner's share of actual Common Area Expenses, such Owner may offset the excess against such Owner's share of estimated Common Area Expenses next due Declarant after Owner's receipt of the reconciliation statement.

(c) The term "**Real Property Taxes**" is used in this Declaration in its broadest possible sense and shall include any form of tax or assessment (whether general or special) or any other charge by any governmental or quasi-governmental agency on any interest of Declarant or Owner in the Shopping Center, including but not limited to any charges of whatever kind, nature, or type in substitution, partially or totally, of any such taxes, assessments, or other such charges now or previously included within the definition of Real Property Taxes including those imposed or required by governmental or quasi-governmental agencies to increase tax increments to governmental or quasi-governmental agencies, and for services such as fire and police protection, streets, sidewalks, road maintenance, refuse removal, or other governmental services formerly provided without charge to property owners or occupants. Real Property Taxes shall not include Declarant's or any other Owner's federal or state income, franchise inheritance or estate taxes.

(d) All Owners shall pay all Real Estate Taxes when due on the Parcels owned by them. If any such Owner shall fail to pay such Real Estate Taxes and assessments when due, any other Owner, or any other Occupant, may pay said taxes and assessments and the curing Owner or other Occupant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay said bill within fifteen (15) days, the curing Owner or other Occupant shall have an action against the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate from the date the costs and expenses included in such bill were paid by the curing Owner or other Occupant until finally paid by the defaulting Owner.



(e) Nothing in this Declaration shall prevent any Owner, including, without limitation, Declarant, from agreeing with any Occupant(s) of such Owner's Parcel, as between themselves, to pay, or reimburse such Owner, for all or a portion of such Owner's obligation to pay Common Area Expenses, Real Property Taxes, insurance (pursuant to Section 7 below), or any other monetary obligations under this Declaration, by whatever formula (or other method of allocation) such Owner and its Occupant(s) may agree upon, and in the event such separate agreement is made, then such agreement shall prevail over the language in this Declaration only as between such Owner and the Occupant of such Owner's Parcel.

## **ARTICLE 6. EASEMENTS**

6.1. Construction, Development, Dedication and Easements. Each Parcel is subject to the present and future dedication of construction and development rights within any specified permanent open space area (including, without limitation, Common Area), as set forth on any final map(s) affecting the Shopping Center or any portion thereof. Declarant, for itself, Developers, the County, and Utility Companies, hereby further reserves temporary easements for access over those portions of the Shopping Center reasonably necessary (i) for the grading of the Parcels to construct, install, reconstruct, modify, or alter Improvements, (ii) for the construction, reconstruction, repair, and reconfiguration of slopes or drainage ways, (iii) for the installation, reinstallation, repair, modification, and reconfiguration of storm drains, sanitary sewers, and water, electric, gas, telephone and cable television lines, and (iv) for the construction, reconstruction, repair, demolition, and removal of walls, inclusive of retaining and/or garden walls; all such temporary easements to be located by Declarant in its reasonable discretion.

6.2. Easements. Declarant reserves to itself the right, from time to time, to grant such easements, rights and dedications as Declarant deems necessary or desirable (including without limitation for the benefit of land adjacent to the Shopping Center), and to cause the recordation of parcel maps and restrictions, respecting the Shopping Center. Each Owner shall sign any of the aforementioned documents consenting to the granting of easements and other use rights upon request of Declarant and failure to do so shall constitute a material breach of this Declaration.

6.3. Temporary License for Access. Each Parcel within the Shopping Center shall be subject to a temporary license in favor of each adjoining or adjacent Parcel for access to slopes or drainage ways located on such Parcel which affect each such adjoining or adjacent Parcels and structures thereon; provided, however, that such license shall exist only for so long as may reasonably be necessary for the Owner of the affected Parcel to repair such slope or drainage way. No such temporary license shall become effective until the Owner requesting such temporary license delivers to the Owner whose Parcel is to be subject to such temporary license (the "Servient Owner") a written request for permission to utilize such temporary license together with a description of the repairs to be completed, a map prepared by a California licensed civil engineer showing the location of the repairs to be performed pursuant to such license, a certificate of insurance naming the Servient Owner and each of its Tenants (as well as Declarant) as additional insureds under the liability insurance policies required to be carried pursuant to Article 7 below, and a reasonable, good faith estimate of the amount of time required to accomplish such repairs. Each such requesting Owner shall indemnify, protect, defend, and hold harmless the Declarant and all other Owners, other Occupants, and their respective employees, agents, and anyone claiming by or through them for all costs, liabilities, damages, and fees (including reasonable attorneys' fees) arising out of or related to

such repairs. Any physical damage caused by such entry by any Owner or its Tenants or its agents shall be repaired at the expense of the Owner who requested such entry.

6.4. Right of Entry. Declarant hereby grants to each Owner and each Occupant for the use and benefit of such Owner and its Occupants and their respective employees, agents, customers, and other invitees, a nonexclusive irrevocable easement with a right of entry to use the Common Area for the parking of motor vehicles, pedestrian and vehicular travel, ingress and egress, and for the other Common Area uses provided for in this Declaration. This easement shall burden the Common Area and the interests of any Owner or other Occupant, and shall benefit each Parcel to which it is appurtenant. This easement, however, is specifically subject to: (a) the other terms of this Declaration; (b) the rules and regulations concerning the use of the Common Area established by Declarant from time to time; and (c) Declarant's right to modify, change, and reconfigure the Common Area subject to the other terms of this Declaration including, without limitation, the right to approve the designation and use of certain parking spaces for the exclusive use of tenants or Occupants from time to time).

6.5. Easements for Utilities. Declarant hereby reserves to itself and grants to each Owner and to the County and any Utility Companies a non-exclusive easement (collectively, the "Utility Easements") over, across, in, under, and through the Shopping Center for the installation, maintenance, removal, and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains, and other public utilities and service easements necessary to provide utility services to the Improvements. In any event, the exact location of any such Utility Easement (i) shall be subject to the prior approval of (a) Declarant and (b) the then Owner(s) and Occupant(s) of any Parcel(s) through which such Utility Easement is proposed to run and (ii) at the request of Declarant and/or any such Owner(s), shall be legally described in a grant of easement or other appropriate document as recorded in the Official Records. Declarant and each Owner and their respective other Occupants shall cooperate with one another, the County, and any Utility Companies and permit installation of any necessary utility and service facilities and lines, except that same shall not be located under any Building Area and shall be constructed to the extent reasonably practical so as not to interfere unduly with the overall development and operation of the Shopping Center or any Improvement thereon or the use of the Common Area for the purposes described in this Declaration. All separate utility facilities installed pursuant to the Utility Easements granted herein designed to serve exclusively one Owner's Parcel shall be installed, maintained, repaired, and removed by that Owner without cost or expense to any other Owner. Declarant reserves to itself and grants to each Owner and each Occupant through which any such Utility Easement may run the right to use the surface of any Utility Easement for any purpose including landscaping and paved parking as now exists in accordance with the Site Plan. Declarant reserves the right to relocate any Utility Easement and, upon such relocation, the Utility Easement referred to herein shall automatically be deemed to be the Utility Easement as relocated. The reasonable cost of any such relocation shall be a Common Area Expense. Each Utility Company and Owner shall, upon their respective exercise of any such rights specified herein, at their respective sole cost and expense, restore the surface of their respective Utility Easement to a condition at least equal to the condition existing immediately prior to the exercise of such rights. Each Utility Company and Owner (a) shall be liable for its own negligence and that of its agents, contractors, employees, and licensees in the construction, covering, or use of its Utility Easement and (b) shall indemnify, defend, and hold all other Owners harmless from any and all cost, liability, damage, claim, or fee arising out of or related to the construction, covering, or use of its Utility Easement.

**ARTICLE 7.  
INSURANCE**

7.1. Owner's Insurance. Except as expressly permitted otherwise by Declarant in writing for the benefit of any Occupant, each Owner (for the purposes of this Article only, other than Declarant) shall, at its sole cost and expense, commencing on the date such Owner takes title to its Parcel procure, pay for, and keep in full force and effect the following types of insurance, in at least the amounts specified below subject to increase as Declarant may reasonably require from time to time, and in the form specified below. No policies issued on a "claims made" basis will be acceptable. All such policies shall have deductible amounts approved in writing by Declarant. Any Owner may satisfy its obligations under this Article 7 by causing the Occupant of its Parcel to carry insurance satisfying the terms of, and otherwise complying with, this Article 7 provided that Declarant reasonably approves in writing evidence that such Occupant has satisfied the terms of this Article 7.

(a) Comprehensive liability insurance with a combined single limit coverage limit of not less than Two Million Constant Dollars (\$2,000,000.00) covering bodily injury, personal injury, death and property damage liability per occurrence and in the aggregate, or the current limit carried by the individual Owner, whichever is greater, insuring Declarant and such Owner against any and all liability with respect to or arising out of the maintenance, use, or occupancy of such Owner's Parcel and any Improvements thereon, or related to the exercise of any rights of such Owner pursuant to the acquisition and/or operation of its Parcel. Further, all such insurance shall include, but not be limited to, blanket contractual, cross-liability, and severability of interest clauses, products/completed operations, broad form property damage, independent contractors, and, if alcoholic beverages are served, sold, consumed, or obtained in the Premises, liquor liability.

(b) Insurance covering all Improvements on such Owner's Parcel, trade fixtures, and other merchandise and personal property from time to time in, on, or about such Owner's Parcel, in an amount not less than full replacement cost (excluding of the cost of excavation, foundations, and the cost of underground flues, pipes and drains), providing protection against any peril included within the classification "fire and extended coverage", sprinkler damage, vandalism, malicious mischief, and such other additional perils as covered in a standard "all risk" insurance policy. Upon the occurrence of a covered casualty, any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed. In addition, each Owner shall maintain comprehensive boiler and machinery coverage on all heating, air-conditioning, and ventilation equipment, electrical, mechanical, and other systems serving the Premises in an amount not less than the replacement value thereof.

(c) Worker's compensation insurance, together with employer's liability coverage as required by Law.

(d) With respect to any improvements to be constructed by an Owner, Builder's Risk Insurance.

(e) With respect to any contractor performing any work on behalf of an Owner, such contractor shall provide liability insurance, worker's compensation and employer's liability coverage in amounts of not less than One Million Constant Dollars (\$1,000,000) naming Declarant and the other Owners as additional insureds.

7.2. Policy Form. All policies of insurance provided for in this Declaration shall be issued by reputable insurance companies with general policy holder's ratings of not less than A-, and financial ratings of not less than Class VI, as rated in the most current available "Best's Key Rating Guide", and which are qualified to do business in California (except that if the insurance company has a general policy holder rating of B+, it will be acceptable if it has a financial rating of not less than Class XII). All such liability insurance policies shall name Declarant, the Manager, (if any), the other Owners, and Declarant's mortgagee(s) or beneficiary(ies) as additional insureds. Executed copies of the policies of insurance, or certificates thereof and endorsements, indicating that such insurance is currently in force, shall be delivered to Declarant upon such Owner's taking of title to its Parcel(s). Thereafter, executed copies of renewal policies or certificates thereof and endorsements shall be delivered to Declarant within thirty (30) days prior to the expiration of the term of each policy. All public liability, property damage, and other casualty policies shall be written as primary policies and any insurance carried by Declarant shall not be contributing with such policies. All policies or certificates of insurance delivered to Declarant must contain provisions indicating that: (a) the insurance is primary (without contribution from Declarant's or its Manager's insurance); (b) Declarant, the Manager (if any), and, as to public liability policies, Declarant's mortgagee(s) or beneficiary(ies) are named as additional insureds; and (c) the insurer will give Declarant at least thirty (30) days' written notice in advance of any cancellation or lapse, or the effective date of any reduction in the amounts, of insurance.

7.3. Blanket Policies. Notwithstanding anything to the contrary contained in this Article, any Owner's obligations to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance; provided, however, that the requirements set forth in this Declaration are otherwise satisfied.

7.4. Self Insurance. So long as any Owner's tangible net worth exceeds One Hundred Million Constant Dollars (\$100,000,000), then such Owner may comply with any of its insurance obligations under this Declaration in whole or in part by means of self-insurance or without insurance. Any Owner may also comply with any of its insurance obligations under this Declaration in whole or in part by permitting a Tenant with a tangible net worth exceeding One Hundred Million Constant Dollars (\$100,000,000) to self-insure. In the event of any such self-insurance, such Owner or Tenant will make available the same indemnity and proceeds as if the coverage required under this Declaration were provided. For purposes of calculating the tangible net worth of an Owner or Tenant, the tangible net worth of the parent, subsidiaries and affiliates of such Owner or Tenant shall be included, to the extent such parent, subsidiaries or affiliates agree to make available, together with such Owner or Tenant, the same proceeds as if such entities and such Owner or Tenant were a single entity.

7.5. Increased Premiums Due to Use of Premises. No Owner shall do, or allow any of its Occupants to do, any act in or about its Parcel or the Shopping Center which will tend to increase the insurance rates upon any other Building in the Shopping Center. Each Owner agrees to pay to Declarant or any other Owner upon demand the amount of any increase in premiums for insurance resulting to Declarant or any such other Owner, respectively, from the offending Owner's use of its Parcel, whether or not Declarant or any such other Owner shall have consented to such use on the part of the offending Owner. If such Owner installs upon its Parcel any electrical equipment which overloads the utility facilities servicing that Parcel, such Owner at its own expense, shall make whatever changes are necessary to comply with the reasonable requirements of Declarant, the insurance underwriters, and any appropriate utility or governmental authority.

7.6. Waiver of Subrogation. No Owner shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring any other Owner for any direct or consequential loss or damage to any Building, structure, Improvement, or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such Owner, its agents or employees, if any such loss or damage is covered by insurance benefiting the Owner suffering such loss or damage. To the extent it may be necessary, Declarant and each Owner agree to obtain from the insurer(s) issuing property policies required hereunder endorsements which shall provide that the insurer waives all right of recovery by way of subrogation against the other party.

7.7. Failure by Owner To Maintain Insurance. Subject to the terms of Section 1.26 of this Declaration, if any Owner neglects to secure and maintain insurance policies complying with the provisions of this Article, Declarant may secure the appropriate insurance policies and such Owner shall pay, upon demand, the cost of same to Declarant, plus a service fee equal to fifteen percent (15%) of the total annual premium cost of the policy or policies. Declarant, or an affiliate of Declarant, may act as an insurance agent or broker in such transactions and will be paid as a result of the placement of such insurance.

## **ARTICLE 8. ENFORCEMENT**

### 8.1. Enforcement Generally.

(a) In the event of any default by any Owner under any provision(s) of this Declaration and upon any failure of any Owner to comply with any provision of this Declaration, the Declarant shall have all the rights and remedies set forth in this Declaration or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other persons for enforcement of such provision, which enforcement may include, without limitation, damages, injunction, and specific performance. All rights and remedies of enforcement provided in this Article are available only to the Declarant, and, except as provided in Subsection (b) below, no Party other than the Declarant shall have any rights to enforce the provisions, covenants, conditions, or restrictions of this Declaration, unless Declarant expressly grants such rights to another party in writing.

(b) If any Owner fails to pay any contribution or other payment when due as required by this Declaration, Declarant or any other Occupant may, but shall not be required to, pay said contribution or other payment and then bill the defaulting Owner for the expense incurred and any ancillary costs incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days after its receipt thereof, the curing party shall have an action against the defaulting Owner for the amount of such bill which amount shall bear interest from the date such expenses and costs included in the bill were paid by the curing party until the bill is finally paid by the defaulting Owner at the Default Rate.

(c) In the event any Owner fails to perform any term or provision of this Declaration, and such failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure (provided, however, that in an emergency no notice shall be required), and upon an additional ten (10) days' prior written notice, Declarant shall have the right, but not the obligation, to enter upon the Parcel of such Owner to cure such default for the account of and at the expense of such Owner, unless such Owner commences to cure such default within such

ten (10) day period and thereafter diligently pursues such cure. If Declarant exercises its self-help right, then, within ten (10) days after receipt of an invoice from Declarant, such Owner shall reimburse to Declarant for all costs incurred by Declarant in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. The foregoing shall be in addition to, and cumulative with, all other remedies provided for in this Declaration or at law or in equity.

(d) The prevailing party in any action or proceeding pursuant to this Declaration shall be entitled to recover from the losing or defaulting party reasonable attorneys' fees, and all ancillary costs and expenses, incurred in the prosecution or defense of such action or proceeding.

## **ARTICLE 9. EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES**

9.1. No Termination. The breach of this Declaration shall not entitle the Declarant, any Owner, or any other person or entity to cancel, rescind, or otherwise terminate this Declaration, or any conditions, covenants, easements, or restrictions hereunder.

9.2. Mortgage Protection. This Declaration, and the rights, privileges, covenants, agreements, and easements hereunder with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust; provided, however, that nothing in this Declaration shall be deemed to make the holder or beneficiary of any mortgage or deed of trust made in good faith and for value (collectively, a "Beneficiary") liable for the performance of any term, covenant, or condition under this Declaration to be performed by such Owner, except if, and when, such Beneficiary or any other person or entity becomes an Owner as a result of a default under said mortgage or deed of trust. Upon so becoming an Owner, such Beneficiary or other person or entity shall become so liable for the performance of any such term, covenant, or condition thereafter to be performed and it shall remain so liable so long as such Beneficiary or other person or entity is an Owner. Neither the making of such mortgage or deed of trust nor its foreclosure shall release the maker thereof from any liability it would have had under this Declaration had such mortgage or deed of trust not been made. Moreover and notwithstanding anything to the contrary in this Declaration, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but, as alluded to above, all of the covenants and restrictions, easements, and conditions and other provisions, terms, and conditions contained in this Declaration shall be binding upon and effective against any person (including any Beneficiary) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

## **ARTICLE 10. COMPLIANCE WITH UNIFORM BUILDING CODE**

All Buildings in the Shopping Center shall substantially comply with all applicable requirements of the Uniform Building Code (the "UBC") of the County in effect as of the effective date of this Declaration.

## **ARTICLE 11. INDEMNIFICATION OF DECLARANT AND LIMITATION OF LIABILITY**

11.1. Indemnity. Each Owner shall indemnify, defend (with attorneys approved by Declarant), protect and hold harmless Declarant for, from and against any and all payments,

liabilities, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), liens, losses, claims of lien, judgments, proceedings and causes of action (collectively, "Claims"), arising out of or in any way connected with this Declaration (i) that are caused directly or indirectly by such Owner, including without limitation, such Owner's breach or violation of any term of this Declaration, or (ii) arising out of or in connection with the management of the Common Areas or the performance of the obligations of Declarant under this Declaration to the extent not covered by the insurance carried by Declarant. The amount of each Owner's obligations under clause (ii) of the preceding sentence of this Section 11.1 shall be determined as a percentage of the total amount of the Claims equal to each Owner's Proportionate Share as set forth in Section 5.5(b) of this Declaration.

11.2. Limitation of Liability. Notwithstanding anything in this Declaration to the contrary, Declarant shall not have any liability or obligation to any Owner for anything arising out of or in connection with this Declaration unless caused by a default of Declarant's obligations under this Declaration which is due to Declarant's sole negligence or sole willful misconduct. There shall be absolutely no corporate or personal liability of persons, partnerships, companies or corporations who constitute Declarant hereunder, including, but not limited to, any of its partners, affiliates, members, officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Declaration. In the event of a default of Declarant hereunder which is caused by Declarant's sole negligence or sole willful misconduct as set forth above, any Owner seeking recovery from Declarant shall look solely to the interest of Declarant in the Parcels owned by Declarant for the satisfaction of each and every remedy of such Owner.

## ARTICLE 12. GENERAL PROVISIONS

### 12.1. Amendments

(a) Subject to Declarant's rights set forth in Section 12.1(b) below, the terms of this Declaration regarding a particular Parcel may only be amended with respect to such Parcel by the Owner of such Parcel and all other Owners at the time such amendment is effective. Such amendment shall not be valid or effective until it is executed by the Owner of such Parcel and any other Owners and such amendment is duly recorded in the Official Records.

(b) Notwithstanding anything in this Declaration to the contrary, for as long as Declarant owns any Parcel within the Shopping Center, Declarant shall have the right to amend or modify this Declaration, without obtaining the consent of any other Owner with respect to any or all Parcels, whether or not owned by Declarant, by executing and recording a written amendment signed by Declarant, provided, however, if a Parcel that is expressly the subject of such modification or amendment is not owned by Declarant, then the Owner of such Parcel shall have the right to approve the same and, if requested by Declarant, such Owner shall cooperate with Declarant in executing and recording the same in the Official Records. As between the Owner of any Parcel and the tenant of such Parcel, nothing contained in this Section 12.1(b) shall limit any approval rights expressly granted to such tenant pursuant to its lease.

(c) Declarant reserves the right to (i) alter the Site Plan for any Parcels owned by the Declarant including the Common Area as it deems appropriate in its discretion; and (ii) include additional land in the Shopping Center (which shall include amending Exhibit "A" and the Site Plan to add such additional land); provided, however, no party shall erect any barriers or obstructions

which prevent vehicular and pedestrian access within the Shopping Center or between the Shopping Center and adjacent streets and roads.

(d) In addition to the rights of Declarant set forth above, Declarant shall have the right, in its sole and absolute discretion, to grant waivers of the enforcement of, or exemptions from, any provision of this Declaration.

(e) Declarant shall have the right to annex additional property into the Shopping Center from time to time and to amend this Declaration to provide for the same.

12.2. Notices.

(a) Notices provided for in this Declaration shall be in writing and shall be addressed to the person intended to receive the same, at the following address:

Declarant: WLPX Eastvale, LLC  
c/o Lewis Operating Corp.  
Attention: General Counsel  
1156 N. Mountain Avenue  
P. O. Box 670  
Upland, CA 91785-0670

with a copy to : WLPX Eastvale, LLC  
c/o Lewis Operating Corp.  
Attention: Property Management  
1156 N. Mountain Avenue  
P. O. Box 670  
Upland, CA 91785-0670

Other Owners: At the address of the Parcel owned by such Owner or any other address designated in writing by such Owner in the manner hereinafter set forth.

The Declarant may designate a different address or addresses for notices to it by giving written notice of such change of address to the other Owners, effective with respect to each Owner, upon the giving of the notice to such Owner. Any Owner may designate a different address or addresses for notices to it by giving written notice of such change of address to the Declarant and the other Owners, effective with respect to each Owner, upon the giving of the notice to such Owner. Notices addressed as above provided shall be deemed given or delivered (i) when mailed by United States mail, postage prepaid, properly addressed, certified or registered, return receipt requested, three (3) days after such mailing, or (ii) when delivered by any reputable overnight delivery service (such as Federal Express, Express Mail, etc.), the first business day after deposit for overnight delivery with an authorized representative of such delivery service, or (iii) when delivered in person, upon such delivery.

(b) Upon the receipt of a written request from a Beneficiary delivered as provided in Section 9.2 to any Owner, such Owner shall thereafter deliver to such Beneficiary a copy of all notices permitted or required by this Declaration to be given to the Owner whose Parcel is subject to the recorded mortgage or deed of trust of such Beneficiary.



12.3. Severability. If any provision of this Declaration or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and of the application of any such section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

12.4. Violation and Nuisance. Every act or omission which results in any provision of this Declaration being or having been violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the County or any Owner or Owners.

12.5. Violation of Law. Any violation of any Law pertaining to the ownership, occupancy, or use of any portion of the Shopping Center is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

12.6. Construction of Document. This Declaration shall be construed in accordance with the laws of the State of California.

12.7. Term. This Declaration and the covenants, conditions, restrictions, easements, and other agreements contained herein, as amended from time to time, shall be and remain in full force and effect for a term of eighty (80) years from the date this Declaration is recorded; thereafter, this Declaration shall be automatically extended for successive periods of five (5) years each unless all Owners execute a recordable document acknowledging the termination of this Declaration.

12.8. Plurals; Gender; Multiple Owners. Whenever the context so requires, the use of the singular shall include and be construed as including the plural and vice versa, and the use of one gender shall include the others. If a Parcel is owned by more than one entity (individually, an "Entity", and collectively, the "Entities"), then all of such Entities shall agree among themselves by a 51% majority of ownership interests and designate in writing to the other parties a single person or Entity who is entitled to act as the Owner for such Parcel. If the Entities cannot agree who shall be entitled to act as the Owner for such Parcel, or if the Entities fail to designate the single person or Entity who is entitled to act as the Owner for such Parcel within thirty (30) days after receipt of a request to do so from Declarant or any Owner, then Declarant and the other Owners shall be entitled to treat any Entity as the Owner of such Parcel without any obligation or liability to the other Entities.

12.9. Headings. Section headings are inserted for convenience only and are not intended to be a part of this document or, in any way, to define, limit, or describe the scope or intent of the particular section to which they refer.

12.10. Attorneys' Fees. Whenever attorneys' fees are referred to in this Declaration they shall include all paralegal fees, court costs, research costs, costs incurred in the preparation for and participation in litigation, fees for advice and interpretation, related to this Declaration or any dispute hereunder, whether or not litigation is ever commenced or a judgment is ever thereafter rendered.

12.11. Estoppel Certificate. Any Owner may, at any time and from time to time, in connection with the sale, lease, or transfer of such Owner's Parcel, or in connection with the refinancing of such Owner's Parcel by mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to any one or more of the other Owners requesting such Owners to certify in writing that, to the best of the knowledge of the certifying Owner, (i) this Declaration is

in full force and effect and a binding obligation upon the certifying Owner, (ii) this Declaration has not been amended or modified, either orally or in writing, and if so amended, identifying the amendments, and (iii) (a) neither the requesting Owner nor the certifying Owner is in default in the performance of their respective obligations under this Declaration (and the certifying Owner knows of no reason or circumstance that, with the giving of notice or the passage of time or both, would result in such a default), or (b) if either one is in default, to describe with reasonable specificity therein the nature and amount of any and all defaults (the "Estoppel Certificate"). Each Owner receiving such request shall execute and return such certificate within thirty (30) days following the receipt thereof.

12.12. Compliance With Hazardous Materials Laws. The term "Hazardous Substances", as used in this Declaration, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB's), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental agency.

(a) Owner's Restrictions. No Owner shall cause or permit to occur:

(i) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about its Parcel(s), or arising from such Owner's use or occupancy of its Parcel or any Building or other Improvements thereon, including, but not limited to, soil and ground water conditions; or

(ii) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under, or about such Owner's Parcel (or the remainder of the Shopping Center), or the transportation to or from such Owner's Parcel (or the remainder of Shopping Center) of any Hazardous Substance, except as specifically approved in writing in advance by Declarant; provided, however, that a fuel service station may be constructed and operated on Parcel 6 of the Parcel Map. This Section shall not prohibit the sale or use of products containing hazardous substances used in the ordinary course of business by retail stores provided that such sale or use is in compliance with Section 12.12(b) below.

(b) Environmental Clean-up.

(i) Each Owner shall, at such Owner's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances (collectively "Hazardous Substance Laws").

(ii) Each Owner shall, at such Owner's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental agencies under the Hazardous Substance Laws affecting such Owner's Parcel.

(iii) Should any Governmental Authority or any third party demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances, at or from an Owner's Parcel, or which arises at any time from any Owner's use or occupancy of its Parcel, then such Owner shall, at such Owner's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and such Owner shall carry out all such cleanup plans.

(iv) Any cleanup, removal and remediation required pursuant to this subsection (b) shall be conducted in accordance with all applicable Hazardous Substance Laws.

(v) Each Owner shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is required by Declarant. If any Owner fails to fulfill any duty imposed under this Section within a reasonable time, then Declarant may, but shall not be required to, do so; and in such case, such Owner shall cooperate with Declarant in order to prepare all documents Declarant deems necessary or appropriate to determine the applicability of the Hazardous Substance Laws to such Owner's Parcel and such Owner's use thereof, and for compliance therewith, and such Owner shall execute all documents promptly upon Declarant's request. No such action by Declarant and no attempt made by Declarant to mitigate damages under any Hazardous Substance Law shall constitute a waiver of any of Owner's obligations under this Section.

(c) Owner's Indemnity. Each Owner hereby indemnifies, defends, and holds harmless Declarant, the Manager, if any, and any lender or encumbrancer of all or part of the Shopping Center and their respective officers, directors, beneficiaries, shareholders, partners, agents, affiliates, joint venturers, related and affiliated groups or entities, and employees from all fines, suits, procedures, claims, liabilities, and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs at or from such Owner's Parcel, or which arises at any time from such Owner's use or occupancy of its Parcel or from such Owner's failure to provide all information, make all submissions, and take all steps required by all governmental agencies under the Hazardous Substance Laws and all other environmental laws.

(d) Survival. Each Owner's obligations and liabilities under this Section 12.12 shall survive its transfer of title to its Parcel, but such Parcel shall nevertheless continue to be burdened by these obligations and liabilities. Each Owner's obligations and liabilities under this Section 12.12 shall also survive the expiration or earlier termination of this Declaration.

12.13. No Public Dedication. No provisions of this Declaration shall be deemed to be a gift or dedication of any portion of the Shopping Center to or for the general public or for any public purposes whatsoever.

12.14. Covenants Running with the Land. Each of the covenants, conditions, restrictions, and easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land both benefiting and burdening the Parcels, and shall be superior to all other subsequent encumbrances applied against or in favor of any portion of the Shopping Center which are the subject of this Declaration. Such warrants, conditions, restrictions, and easements are for the purpose of protecting the value and desirability of the Shopping Center and pursuant to a general plan to so develop the Shopping Center. In furtherance of the easements provided for in this Declaration the individual grant deeds to the Parcels may, but shall not be required to, set forth said easements.

12.15. Conflict with Leases. In the event of a conflict between the terms and provisions of this Declaration and the terms and provisions of a Lease between an Owner and an Occupant of such Owner's Parcel, then as between such Owner and such Occupant, the terms and provisions of the Lease shall prevail.

12.16. Dispute Resolution; Jury Trial Waiver.

(a) Each controversy, dispute, or claim ("Claim") between any Owners and/or Declarant arising out of or relating to this Declaration, which Claim is not settled in writing within thirty (30) days after the "Claim Date" (defined as the date on which Party gives written notice to another that a controversy, dispute, or claim exists), will be settled by a reference proceeding in California, without a jury, in accordance with the provisions of Section 638, et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which except for the remedies set forth in this Declaration shall constitute the exclusive remedy for the settlement of any controversy, dispute, or claim concerning this Declaration, including whether such controversy, dispute, or claim is subject to such reference proceedings. The referee shall be a retired Judge of the Superior Court in Riverside County (the "Court") selected by mutual agreement of the parties to such dispute, and if they cannot so agree within forty-five (45) days after the Claim Date, the referee shall be promptly selected by the Presiding Judge of the Court (or his or her representative). The referee shall be appointed to sit as a temporary judge, with all of the powers for a temporary judge, as authorized by law, and upon selection should take and subscribe to the oath of office as provided for in Rule 244 of the California Rules of Court (or any subsequently enacted Rule). Each party shall have one peremptory challenge pursuant to CCP §170.6. The referee shall (i) be requested to set the matter for hearing within sixty (60) days after the Claim Date, and (ii) try any and all issues of law or fact and report a statement of decision upon them, if possible, within ninety (90) days of the Claim Date. Any decision rendered by the referee will be final, binding, and conclusive and judgment shall be entered pursuant to CCP §644 in any court in the State of California having jurisdiction. Any party may apply for a reference proceeding at any time after thirty (30) days following notice the Claim Date by filing a petition for a hearing and/or trial. All discovery permitted herein shall be completed no later than fifteen (15) days before the first hearing date established by the referee. The referee may extend such period in the event of a party's refusal to provide requested discovery for any reason whatsoever, including, without limitation, legal objections raised to such discovery or unavailability of a witness due to absence or illness. No Owner shall be entitled to "priority" in conducting discovery. Depositions may be taken by either party upon seven (7) days written notice, and request for production or inspection of documents shall be responded to within fourteen (14) days after service. All disputes relating to discovery which cannot be resolved by the parties involved shall be submitted to the referee whose decision shall be final and binding upon the parties. Pending appointment of the referee as provided herein, the Court is empowered to issue temporary and/or provisional remedies, as appropriate.

(b) Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of all hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter except that when any party so requests, a court reporter will be used at any hearing conducted before the referee. The party making such a request shall have the obligation to arrange for and pay for the court reporter. The costs of the court reporter at the trial shall be borne equally by the parties.

(c) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, to provide all temporary and/or provisional remedies and to enter equitable orders that will be binding upon the parties. The referee

shall issue written findings of fact and conclusions of laws, a written statement of decision, and a single judgment at the close of the reference proceeding which shall dispose of all of the claims of the parties that are the subject of the reference. The parties to such proceeding shall be deemed to reserve the right to contest or appeal from the final judgment or any appealable order or appealable judgment entered by the referee and expressly reserve the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(d) WAIVER OF JURY TRIAL. BY TAKING TITLE TO A PARCEL, EACH OWNER SHALL BE DEEMED TO WAIVE ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS DECLARATION, IN ANY ACTION, PROCEEDING, OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY ASSIGNEE WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A REFERENCE AS PROVIDED ABOVE BUT THIS WAIVER SHALL BE EFFECTIVE EVEN IF, FOR ANY REASON WHATSOEVER, SUCH CLAIM OR CAUSE OF ACTION CANNOT BE TRIED BY SUCH REFERENCE.

12.17. Required Provisions. The following provisions are included in the Declaration in order to satisfy the requirements of the County, and notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

(a) Declarant or any property owners' association established herein shall manage and continuously maintain all landscaped areas including the swales (collectively, including such swales, "Landscape Areas") which are a part of the Common Area and which are depicted on the Site Plan attached hereto.

(b) Declarant or any property owners' association shall have the right to assess the owners of each individual parcel for the reasonable cost of maintaining such Landscape Areas, and shall have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment in accordance with this Declaration. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

(c) This Declaration shall not be terminated, "substantially" amended, or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered "substantial" if it affects the extent, usage or maintenance of the Landscape Areas or any reciprocal easement established pursuant to the Declaration.

(d) In the event of any conflict between this Declaration and the Articles of Incorporation, or the Bylaws of any property owner's association, or the property owners' association Rules and Regulations, if any, this Declaration shall control.

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

**"Declarant"**

WLPX EASTVALE, LLC,  
a Delaware limited liability company

By: LEWIS OPERATING CORP.,  
a California corporation  
Its Sole Managing Manager

By: John M Goodman  
Name: John M Goodman  
Title: Sr. VP / CEO / CEO  
Its Authorized Agent

EXHIBIT "B"

SITE PLAN

EASTVALE SOUTH  
S.E.C. LIMONITE AVE. & HAMNER AVE.  
RIVERSIDE COUNTY, CALIFORNIA

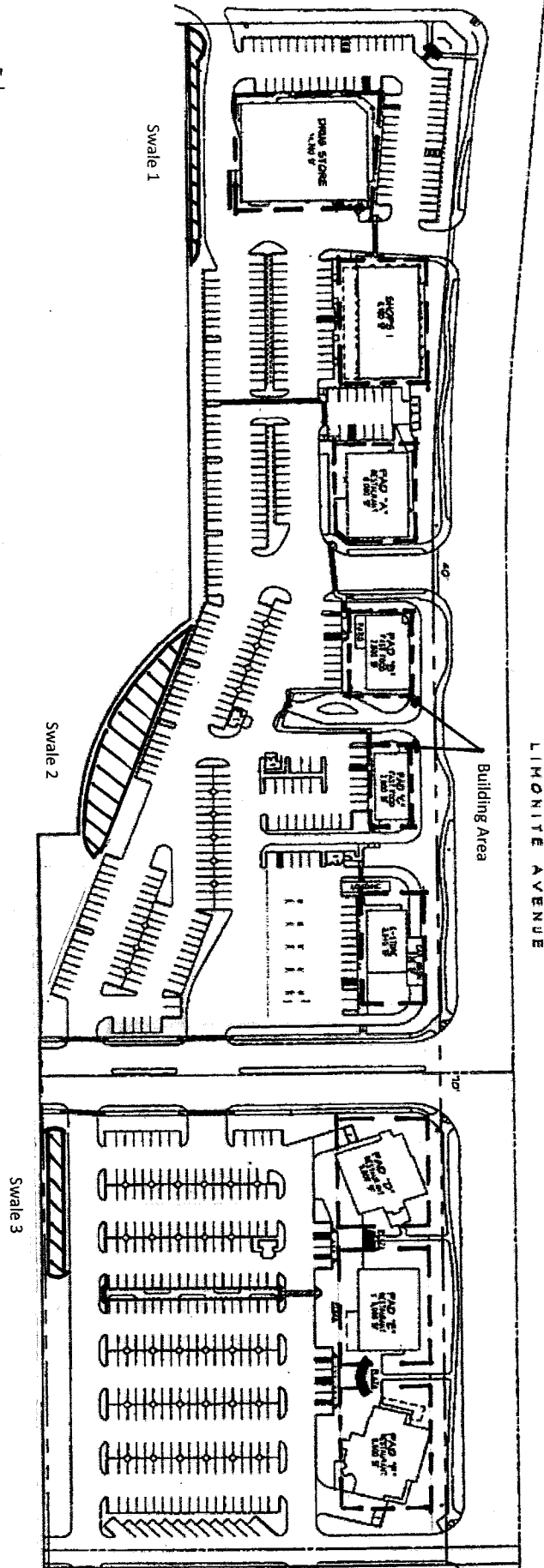


EXHIBIT "B"