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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CAPITAL COMMERCE CENTER
WASHINGTON, D.C.

This Instrument Prepared By:
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Washington, D.C.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CAPITAL COMMERCE CENTER, WASHINGTON, DC

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 14th day of October, 1988, by CSX REALTY, INC., a Virginia corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the record owner of certain real property located in Washington, D.C., which is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, Declarant desires to develop the Property as a center for commerce and business which is known and shall hereafter be known as "Capital Commerce Center" (hereinafter referred to as "the Center"); and

WHEREAS, Declarant desires that the Property be subjected to certain restrictive covenants for the mutual benefit and protection of itself and all persons, corporations, partnerships or entities who may hereafter purchase, lease, and develop and use property within the Center;

NOW THEREFORE, Declarant does hereby impose upon the Property those covenants, conditions, restrictions, reservations, and easements hereinafter set forth which shall be binding upon and

enforceable against each and every person, corporation, partnership or other entity who or which shall hereafter own, lease, develop, use or control (through a trust, power of attorney or other instrument) all or any portion or Site of the Center or any right, title, interest or estate therein.

ARTICLE I

GENERAL

Section 1. Definitions. The following words and terms, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

A. "B.A.R." shall mean the Board of Architectural Review appointed in accordance with Article XII, Section 2 hereof, the duties of which are set forth in said Section 5.

B. "Association" shall mean and refer to Capital Commerce Center Association, Inc., a District of Columbia corporation, and its successors and assigns.

C. "Common Areas" shall mean and refer to all personal, real and intangible property presently in existence or which shall come into existence in the future, or interests therein which is (i) located within or in the immediate vicinity of the Center, (ii) located on commonly held or privately held property, (iii) owned by the Declarant or the Association or in which the Declarant or the Association otherwise has an interest, and (iv) dedicated, devoted or subject to or otherwise available for the common use,

enjoyment or benefit of some or all members of the Association (such as, for purposes of illustration only, the Spine Road or any other internal roadway or right-of-way).

D. "Common Expenses" shall mean and refer to the costs of maintaining, operating, administering and carrying out the purposes, functions and duties of the Association as established herein and in the Articles of Incorporation and Bylaws of the Association.

E. "Declarant" shall mean and refer to CSX REALTY, INC., a Virginia corporation, and its designated successors and assigns, and shall include any person or entity to whom Declarant may expressly assign, convey or transfer all of its rights, privileges, duties and obligations as Declarant hereunder. All of the Declarant's privileges and duties shall cease and expire simultaneously with the termination of the Declarant's Class "B" Membership in the Association, as specified in Article II, Section 2B hereof, except that the Declarant shall retain all of its easement rights hereunder. Such termination shall not affect any of Declarant's rights as an Owner hereunder to the extent that Declarant is the owner of any of the Property.

F. "Improvements" shall mean and include any and all buildings, outbuildings, structures, utilities, parking or loading areas, storm water management systems, sanitary sewer systems, roadways, driveways, walkways, storage areas,

fences, walls, hedges, landscaping, poles, ponds, lakes, signs, lighting fixtures and all other structures and facilities of any kind or nature, whether presently in existence or to be constructed in the future, constructed or located on any Site on the Property and any replacements, additions, modifications or alterations thereto.

G. "Member" shall mean and refer to any Owner, Assignee or lessee who is a member of the Association.

H. "Owner" shall mean the record owner of the fee simple title to a Site or parcel within the Property.

I. "Property" shall mean and refer to the real property, including any Improvements thereon, described on Exhibit "A" and such additional property as may be brought within the jurisdiction of the Association by Declarant as hereinafter provided. All of the Property and any right, title, estate or interest therein shall be owned, held, leased, sold and/or conveyed by Declarant, and any subsequent owner of all or any part thereof, subject to this Declaration and the covenants, restrictions, charges and liens set forth herein.

J. "Regulations" shall mean all applicable laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, judgments or other requirements of any governmental or quasi-governmental authority having

jurisdiction over the Property or any Improvements constructed or located therein.

K. "Signs" shall mean all names, insignia, trademarks, logos and descriptive words or material of any kind affixed, inscribed, erected or maintained upon the Property or upon any Improvement located thereon.

L. "Site" shall mean each separate lot, tract or parcel of real property within the Property which is sold, leased or conveyed by Declarant or its successor

M. "Special Common Areas" shall mean and refer to all personal, real and intangible property, or interests therein, located within or in the immediate vicinity of the Center located on property to which title is held by a third party, including but not limited to, property owned by any governmental entity or agency, whereby the Association may be responsible for the costs of maintenance, repair or refurbishment so long as the need for such maintenance, repair or refurbishment with respect to such Special Common Areas shall be for the reasonable benefit of the Association.

N. "Spine Road" shall mean such internal road and right-of-way associated therewith located within the Property which allows vehicular ingress and egress to and from the Sites and the public streets adjacent to the Property.

O. "Unimproved Areas" shall mean those portions of the Property upon which no Improvements are permitted or constructed, without the express consent of the Association or the B.A.R. Unimproved areas shall be designated herein or on any plat of all or any portion of the Property, or by separate instruments hereafter recorded by the Declarant on those portions of the Property then owned by Declarant.

Section 2. Additions to Property Subject to Declaration.

Additional property may become subject to this Declaration in the following manner:

A. The Declarant, in its sole discretion, may at any time commit additional property to the scheme of this Declaration by filing of record a Supplement which need only be executed by the Declarant and does not require the execution or consent of the Association or its Members ("Supplementary Declaration").

B. Such Supplementary Declaration may contain covenants and restrictions to which the properties described therein shall be subject. Such Supplementary Declaration may contain additions, deletions and modifications with respect to the property covered thereby from those set forth in this Declaration as may be necessary to reflect the different character of the properties so added. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by previously

filed Supplementary Declarations for any other portion of the Property nor shall such Supplementary Declaration in any way change the provisions of this Declaration.

C. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided. -

Section 3. Property Owners' Association. The Declarant, for the purpose of the efficient preservation of the values and Common Areas of the Center, desires to create the Association as defined in Article 1, Section 1(B). The Association is responsible for, and is hereby delegated and assigned the duty and power of maintaining and administering the Common Areas and the Special Common Areas, administering and enforcing this Declara-

tion, and collecting and disbursing the assessments and charges hereinafter created.

ARTICLE II

MEMBERSHIP, VOTING RIGHTS AND CONTROL OF THE ASSOCIATION

Section 1. Membership. Each and every person, persons or legal entity who is the Owner of a fee or undivided fee interest of any Site in the Property shall automatically be a member of the Association, provided that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Site which is subject to assessment. If the ownership of a Site is vested in other than a single person or entity, then the Owner shall designate a voting member to act on its behalf in connection with all Association balloting and other similar activities. The voting member shall be designated in writing by the persons or entity owning the applicable Site. The designation shall be witnessed and acknowledged before a notary public and delivered to the Association. Prior to the receipt of the written designation of the voting member, the Association shall have no obligation to recognize the right of any person to act on behalf of such Owner. The designation of a voting member shall be executed by such person or combination of persons who are authorized to bind the Owner in question. The Association shall be entitled to rely upon the validity and accuracy of any such designation

delivered to it executed in accordance with the terms hereof. The voting member may be changed, from time to time, by the Owner, by re-execution and delivery of a subsequent and superceding voting member designation executed in accordance with the provisions hereof.

Section 2. Classes of Voting Members. The Association shall have two classes of voting memberships:

A. "Class A" Members shall be all those Members described in Article II, Section 1 hereof, except Declarant. Class A Members shall be entitled to the number of votes for each Site owned by such Member, determined by multiplying 100 by a fraction, the numerator of which is the number of square feet of at-grade and above-grade occupied gross building area owned by such Member and the denominator of which is the then total sum of all numerators applicable to all Sites within the Property. In the event that more than one person or entity holds such interest in any Site, all such persons or entities shall be Members, but only the number of votes as determined by this Section shall be cast with respect to any Site.

For the purposes of illustration only, if the Property contained a total of 100,000 square feet of at-grade and above-grade occupied gross building area and a Member owned one Site with 10,000 square feet of such occupied gross building area,

such Member would have ten (10) votes for that Site as determined by the following equation:

$$100 \times \frac{10,000}{100,000} = 10 \text{ votes}$$

B. "Class B" Members shall be Declarant, its successors or assigns, whose affirmative vote shall be necessary to adopt any proposal before the Association (i.e., Declarant shall have "veto power" over any such proposal). This veto power in Declarant shall exist until the earlier of: (i) twenty-five (25) years from the date hereof; or (ii) up to the point in time that ninety percent (90%) of the Property then subject to this Declaration, or any supplement hereto, shall be held in fee by parties other than Declarant or its successors or assigns. Said ninety percent (90%) shall be based upon the total land area, in acres, comprising the Property.

For the purpose of illustration only, assuming this Declaration is executed on January 1, 1989, and the Property consists of thirty (30) acres, Declarant's veto power would expire on the earlier of: (a) December 31, 2014, or (b) such time as Declarant has sold, assigned or otherwise conveyed its fee interest in twenty-seven (27) of the thirty (30) acres.

Twenty-five years from the date hereof or at such earlier time as ninety percent (90%) of the Property shall be held in fee by parties other than Declarant or its

successors or assigns, the Class B membership shall cease and shall convert to Class A membership, and Declarant shall be entitled to vote in accordance with the requirements for voting for Class A memberships.

Section 3. Assignment of Voting Rights. Class A voting rights may not be assigned or transferred, in whole or in part, as such rights relate to a particular tract or parcel of the Property, except that voting rights may be assigned as follows: (i) to a lessee holding a lease on such particular Site, provided that the primary term of the lease is for a period of not less than ten (10) years, and provided that the lessee occupies seventy-five percent (75%) of the square feet of at-grade or above-grade gross building area on the Site; and (ii) to a mortgagee of a Site, provided that such assignment shall not become effective until an officer or other authorized representative of such mortgagee shall notify the Association, by written affidavit, that material default has been committed by the mortgagor of the applicable Site and that the mortgagee has assumed control and management of the Site. The Association shall be conclusively authorized to rely upon any such affidavit received by it from a mortgagee. In no event shall Owner assign less than one hundred percent (100%) of its voting rights to any such lessee or mortgagee under the provisions hereof.

Section 4. Control of the Association. Except as hereinafter specified, control of the Association and all of its rights,

powers and duties set forth herein and in the Articles of Incorporation and Bylaws of the Association shall be vested in the Board of Directors of the Association, who shall act in accordance with the votes of a majority of the members of the Board. The members of the Board shall be elected by the vote of a majority of the votes of the Class A Members of the Association, from time to time, in accordance with the procedures and for the terms established in the Articles of Incorporation and Bylaws of the Association. Notwithstanding the foregoing, or anything herein or in the Articles of Incorporation or Bylaws of the Association to the contrary, the Declarant shall have the right to appoint a majority of the Board of Directors of the Association for not less than ten (10) years from the date hereof and for so long thereafter as the Declarant shall own or control a majority of the Property (in acreage) then subject to this Declaration or any Supplements thereto.

ARTICLE III

ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Covenants and Assessments. The Declarant hereby covenants, and each Owner of any Site within the Property by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Association: (a) annual assessments or charges (as specified in Article III, Section 3 hereof); (b) special assessments for capital improvements or extraordinary

expenses (as specified in Article III, Section 4 hereof), and (c) improvement assessments (as specified in Article III, Section 5 hereof). All of such assessments shall be fixed, established and collected from time to time as hereinafter provided.

Section 2. Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for some or all of the following purposes: to promote the common use, enjoyment and benefit of the Members of the Association (including, but not limited to, advertising and sponsorship of community activities) in order to provide for the beautification, maintenance, security, street lighting and preservation of the Property for the benefit of the Members of the Association, and the Common Areas and Special Common Areas; and for carrying out the purposes of the Association as stated in its Articles of Incorporation, including without limitation, the care, maintenance, repair and replacement of all Common Areas, Special Common Areas and Improvements, and the paving, drainage, landscaping of improvements located thereon or associated therewith, including the entrance ways and approaches to the Property, whether on or off the Property, street lighting and all drainage and utility facilities, including storm water management and sanitary sewer systems, and structures or public improvements located thereon.

Section 3. Annual Assessments. The annual assessments levied by the Association shall be used for the purposes of

maintenance of the Common Areas, enforcement of this Declaration, establishment of a reserve account and for any other purpose of the Association. The cost of maintenance of the Common Areas shall include, but shall not be limited to, all public liability and hazard insurance premiums, water, lighting, and electrical charges, landscaping maintenance, storm water drainage, cleaning, snow removal, security, signage, paving, repair, and replacement, and all other costs and expenses necessary for the proper maintenance and administration of the Common Areas. The cost of maintenance shall also include, without limitation, any reasonable accounting costs, reasonable attorney fees, court costs and similar management or overhead expenses customary in the operation or management of the Common Areas, in the operation of the Association, and in the administration and enforcement of the provisions hereof.

Section 4. Special Assessments. In addition to the Annual Assessments authorized by Article III, Section 3, hereof, the Board of Directors of the Association may levy in any assessment year or years a "Special Assessment" for the purpose of defraying, in whole or in part, the cost of operation of Common Areas, the actual costs of any construction or reconstruction, maintenance, unexpected repair or replacement of any Improvement within or forming a part of the Common Areas or the Special Common Areas, including the necessary fixtures and personal property related thereto; or the costs of construction within any

Common Areas or Special Common Areas; road improvements within the Center; or to make up any shortfall arising from the fact that the Annual Assessment is insufficient to pay for the costs contemplated herein, including the costs of care, maintenance and repairs of Improvements on or off the Property; or for carrying out other purposes of the Association as stated in its Articles of incorporation, including enforcement of this Declaration. The amount of such assessment shall be paid by each Owner in the proportions as described in Article III, Section 6, below.

Section 5. Improvement Assessments. With respect to any Improvements that will form a part of the Common Areas or Special Common Areas which are designed and intended to be for the benefit of specific Sites subject to this Declaration, whether owned by third parties or the Declarant, such improvement shall be constructed or installed at the sole cost and expense of persons or entities (other than the Association) to be benefitted thereby. With respect to any Improvements which form a part of the Common Areas or Special Common Areas which are designed and intended to benefit all Sites within the Property or the value, use or utility of the Property in general, the Association shall bear all costs and expense for the construction, installation, maintenance and repair thereof.

Section 6. Rate of Assessment. Annual, Special and Improvement Assessments shall be fixed at a pro rata share for each Site determined by dividing the total square footage of

3 1 0 0 0 2 1 5

gross building area owned by such Member by the aggregate square footage of gross building area owned by all Members of the Association, including Declarant. For the purposes of illustrating the rate of assessment, and assuming the Association has estimated the Common Expenses for a fiscal year at \$50,000, and the total square footage of gross building area owned by all Members and Declarant is 100,000, if Member owns 10,000 square feet of gross building area on one Site or a combination of Sites, such Member's rate of assessment would be 10% as expressed by the following equation:

$$\frac{10,000}{100,000} = 10\% \text{ (or } \$5,000, \text{ using the above example)}$$

Each Member shall pay to the Association the "Annual Assessment" which shall be determined prior to the beginning of each fiscal year in a budget adopted by the Association's Board of Directors for such fiscal year which shall estimate all of the Common Expenses to be incurred by the Association during such fiscal year. Should such Annual Assessments be insufficient to generate funds to pay the aforesaid costs of maintenance and repair, the Annual Assessment shall be increased by the Board of Directors of the Association, except that for a period of five (5) years from the date of recordation of this Declaration or for so long as Declarant controls the Association (whichever is longer), the initial year's Annual Assessment provided for above shall not be increased by more than twenty-five percent (25%) per

annum over the immediately preceding year's assessment without the affirmative vote of two-thirds (2/3rds) of all Class A Members other than the Declarant. Notwithstanding any provisions hereof to the contrary, this provision may be amended only by a vote taken by a similar majority as set forth in this paragraph.

Section 7. Commencement Date of Annual Assessment. The first Annual Assessment provided for herein shall commence upon the first sale of any Site by Declarant and shall continue thereafter from year to year.

Section 8. Due Date of Annual Assessments. The first Annual Assessment shall accrue from the date title to a Site is transferred from Declarant to Owner, and the first Annual Assessment shall become due and payable to the Association one (1) year from the date title is transferred to Owner. Annual Assessments for each subsequent year shall become due and payable in advance in equal semi-annual installments on January 1st and July 1st, of each such year and shall be delinquent if not paid by the 15th of such month. In the event of a delinquency, such delinquent Owner shall pay such penalties and/or interest as are established by the Board of Directors. The due date and delinquent date of any special or improvement assessment under Article III, Sections 4 and 5 hereof, shall be fixed in the resolution of the Board of Directors of the Association authorizing such assessment.

Section 9. Liability for Assessments. Assessments (Annual, Special, and Improvement) levied pursuant to this Declaration,

together with interest, costs and such reasonable attorneys' fees as may be associated with the collection thereof (whether suit be brought or not) shall be a charge and a continuing lien upon the Member's Site with respect to which any such assessment is made or levied. In addition, each such assessment, together with interest, costs and reasonable attorneys' fees associated with the collection thereof, as aforesaid, shall also be the personal obligation and liability of each Owner of a Site within the Property, if such Owner is a sole proprietor, partnership, joint venture or individual(s), other than a corporation, from the time such assessment is made or levied. Such personal liability for assessments made or levied pursuant to this Declaration prior to the conveyance of a particular Site shall not, by virtue of any such conveyance, pass to such Owner's successor in title or estate, except that the lien of such assessment shall follow the title to the Site from and after the recording of the notice of assessment lien referred to in Article III, Section 10, below.

Section 10 Effect of Nonpayment of Assessments. Upon the failure of any Owner to pay a required assessment within twenty-one (21) calendar days following mailing or delivery of written notice of such delinquency from the Association, the Association may record among the land records of the District of Columbia a notice of assessment lien against the Site against which such assessment is made. Thereupon, the Owner against whom the lien is filed shall promptly pay the cost of preparation and filing of

such assessment lien, the amount of the lien, and any attorneys' fees of the Association incurred in connection with the enforcement or collection thereof, with interest on all such sums from the date incurred or due, which rate of interest shall not exceed two percent (2%) above the base lending rate of Riggs National Bank, Washington, D.C. or its successor. At any time during the above twenty-one (21) day period following mailing of the notice of delinquency, the Owner, without prejudice to or waiver of its rights hereunder or otherwise provided in law or in equity, may dispute the assessment by paying to the Association the full amount of the assessment then due and demanding in writing that the disputed assessment be arbitrated in accordance with the provisions of the Rules of the American Arbitration Association. Payment in full shall be a prerequisite for such arbitration.

If the assessment has not been paid in full and the Owner fails to demand arbitration under the provisions hereof within the twenty-one (21) day period, the Association may bring an action at law or equity against the Owner personally obligated to pay the same and may foreclose its assessment lien against the Site covered thereby as hereinafter contemplated. No Owner may waive or otherwise avoid liability for the assessments provided for herein by nonuse of the Common Areas, or Special Common Areas or abandonment of its Site.

Section 11. Subordination of Assessment Lien to Mortgages.

The lien of the assessments provided for herein shall date from and have priority as of the date of recording a notice thereof as specified in Article III, Section 10, above provided, however, such lien shall be subordinate to the lien of any bona fide mortgage on the Property or any Site therein which is recorded among the land records of the District of Columbia prior to the recording of the said notice of assessment. The sale, transfer or lease of any such Site shall not affect the validity or viability of an assessment lien; provided, however, that the sale or transfer of any such Site pursuant to proceedings in foreclosure of a bona fide mortgage (or a conveyance in lieu of foreclosure of such mortgage) which was recorded among the land records of the District of Columbia prior to the recording of any such notice of assessment lien shall extinguish the lien of such assessments which became due prior to such sale or transfer. No such sale or transfer of a Site shall relieve such Site or the Owner thereof from the personal obligation or liability for the payment of any assessments thereafter becoming due or from the lien thereof.

Section 12. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article III but unpaid, shall together with interest and the reasonable costs of collection, including attorneys' fees as hereinafter provided, upon recording of the notice provided for in Article III, Section 10,

herein, become a continuing lien and charge on the Site covered by such assessment, which shall bind such property in the hands of the Owner, and his heirs, devisees, personal representatives, successors and assigns. The aforesaid lien shall be superior to all other liens and charges against the same Site, except only for mortgages in the manner contemplated in Article III, Section 11 hereof. Such lien for payment of assessments shall attach with the priority above set forth and may be enforced by the foreclosure of the defaulting Owner's Site by the Association subsequent to the recording of a notice of assessment lien in like manner and with all the protections provided by law of the District of Columbia as a foreclosure of a deed of trust on real property. In addition, the Association may institute suit against the Owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the Association in pursuit of its rights hereunder and as may be awarded by a court of law or equity, or in nonjudicial settlement or arbitration. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, encumber, convey or otherwise deal with the same.

Section 13. Certificate of Assessments Due. The Association shall furnish upon written request a certificate setting forth whether assessments or other amounts due the Association on

a particular Site within the Property have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Site shall be binding upon the Association as of the date of its issuance.

Section 14. Association Records. The Association shall maintain books of account for all Annual, Special and Improvement Assessments for Common Expenses and the receipt and disbursement of all funds collected and disbursed on account thereof. Said books of account shall be maintained by the Association at its offices within the Center, or at any other place within the District of Columbia designated by Declarant in writing, and shall be available for immediate inspection by Owners or authorized representatives of the Owners upon written request during regular business hours.

ARTICLE IV

PROTECTIVE COVENANTS AND USE RESTRICTIONS

Section 1. Permitted and Prohibited Uses. Permitted uses on any Site within the Center shall be those uses which are permitted by the District of Columbia zoning regulations for the "M" and "C-M" zones, as such zones may be amended from time to time, or for any successor zoning district, except that the following uses are expressly prohibited regardless of the zoning regulations now or hereafter in effect, unless the B.A.K. shall, in its sole discretion, approve such use: incinerator, public utility, pumping station, repair garage, junk or salvage yard,

temporary or permanent detention or correctional facility, gasoline service station or gasoline storage facility (other than as an incidental use to a primary use), storage of any hazardous waste materials or toxic, flammable or explosive materials, billiard parlor or pool hall, boat sales, massage establishment or public bath, sexually oriented business establishment, automobile, truck or motorcycle sales or repair establishment, fast food or drive-in restaurant, off-premises alcoholic beverage sales, antenna tower, community based residential facility, automobile laundry (i.e., car wash), automobile rental agency, funeral or undertaking establishment, any use which generates or emits noxious noise, odors, smoke, steam or other airborne wastes, and any use which is specifically prohibited in an "M" zone district. The B.A.R., in its sole discretion, shall have final approval as to the acceptability of any proposed use on any Site within the Center.

Section 2. Animals. No husbandry of animals, fowl or fish shall be conducted or maintained on the Property.

Section 3. Prohibition on Subdivision or Conveyance of a Portion of a Site Without Consent. A Site shall not be subdivided, combined or consolidated with another Site (or portion thereof) or a portion thereof sold, conveyed or transferred by any person or entity other than Declarant without the prior written consent of the Association.

Section 4. Nuisance Factors and Hazards. No business, trade, activity, or operation shall be conducted on any Site which shall be noxious, offensive, illegal, or which shall cause an emission of dust, smoke, odors, fumes, radiation, noises or vibrations which may be or become a nuisance or an annoyance to the occupants of any adjacent or neighboring Site, such determination to be made by the Association. All on-site-operations and activities shall be conducted with appropriate precautions against radiation, radioactivity, fire, explosion and other hazards.

Section 5. Disposal of Waste and Rubbish. All waste and rubbish shall be stored, treated and disposed of in such a manner so as to at all times comply with all applicable regulations and any requirements of the B.A.R.

Section 6. Excavation. No clearing or excavation of a Site shall be made except in connection with the approved construction, maintenance or repair of an Improvement; and upon completion thereof, exposed openings shall be secured and backfilled and disturbed ground shall be leveled, graded and landscaped in accordance with a landscape plan approved by the B.A.R.

Section 7. Wells. Without the prior written consent of the Association, no well for the production of water, whether potable or for irrigation or other limited purposes, shall be dug, used or otherwise permitted on a Site.

Section 8. Storage Tanks. No storage tanks, including, but not limited to, those used for storage of water, propane gas or other fuels or chemicals shall be permitted on a Site unless first approved in writing by the B.A.R. The B.A.R. may condition any such approval on such reasonable requirements with respect thereto as it, in its sole discretion, may deem appropriate, taking into account the nature of the materials to be stored and the nature, size and location of the proposed storage tank. Notwithstanding the above, Members shall comply with all applicable federal and local regulations and rules governing such storage tanks, regardless of B.A.R. requirements.

Section 9. Mailboxes. Except as may be otherwise approved by the B.A.R., all mailboxes shall be located within a building.

Section 10. Storage of Materials and Equipment. Except during the construction of Improvements, no materials, supplies or equipment shall be stored on a Site except inside of a building or structure, or behind a visual barrier which shall have been previously approved by the B.A.R. Stored materials, supplies and equipment shall at all times be screened from street rights-of-way and adjacent or neighboring properties.

Section 11. Parking. No parking shall be permitted on a Site in areas other than parking areas previously approved by B.A.R.. Declarant hereby expressly reserves the right to use any or all parking facilities within the Center during non-business hours and weekends.

Section 12. Maintenance. Each Site and all Improvements and landscaping located thereon shall at all times be kept and maintained in a safe, wholesome, attractive and clean condition, and shall not be allowed to deteriorate, fall into disrepair or become unsafe or unsightly. In the event of a violation of or failure to comply with the foregoing requirements and the failure or refusal of the Owner of the affected Site, within seven (7) days following written notice from the Association of such violation or non-compliance and the nature thereof, to cure such violation, then the Association or its appointed agents or employees shall have and are hereby granted the right and privilege and an easement and license to enter upon the Site or any portion or portions thereof or Improvements located thereon for the purpose of undertaking such acts or actions as may be reasonably necessary to cure or eliminate such violation, at the sole cost and expense of the Owner of the affected Site. Such costs and expenses, together with an overhead expense equal to fifteen percent (15%) thereof, shall be assessed to and paid by the Owner of the affected Site to the Association within thirty (30) days after receipt of written notice of the amount due therefor. Any such statement not paid within said thirty (30) day period shall become a lien on the Site in accordance with the provisions of this Declaration for assessments pursuant to Article III and shall be subject to such penalties, interest and foreclosure as are applicable in conjunction with such liens.

Section 13. Mining. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Property, nor shall any oil, natural gas, petroleum, rock, gravel or other minerals or substances of any kind be produced or extracted therefrom.

Section 14. Water and Sewage. All Owners shall comply with all governmental or quasi-governmental regulations in effect with regard to sewage disposal, water supply and sanitation. All completed buildings shall connect, at Owner's expense, with central water and sewer utilities within ninety (90) days from the date such utilities are available or from the date of B.A.R. plan approval. No Member shall establish, permit or maintain any septic fields or drain fields.

Section 15. Tractor Trailer Traffic. Subject to all governmental, quasigovernmental or other regulations in effect with regard to vehicular traffic, tractor trailer vehicles are expressly allowed to operate on the Spine Road located within the Property and on any Site if permitted by the Owner thereof. Declarant agrees to construct the Spine Road to specifications permitting such tractor trailer use. The Association shall maintain and repair the Spine Road in such a manner that tractor trailers shall, at all times, be able to use the Spine Road.

ARTICLE VEASEMENTS

Section 1. Road Easements. There is hereby created, declared and reserved for the benefit of the Association, the Declarant, the Owner of each Site within the Property, its and their invitees and all public agencies, for routine and emergency maintenance, services and repairs (including fire and rescue services) a non-exclusive easement for access, ingress, egress and road purposes over all roads, ways, sidewalks and drives within the Property, whether existing or to be constructed hereafter, including the Spine Road and its right-of-way, and such areas immediately adjacent to the foregoing which are customarily used for utilities or similar purposes, which serve or are intended to serve more than one (1) Site or Owner (hereinafter referred to as the "Roadways"). In the event of routine maintenance, services and repairs pursuant to the foregoing, the Declarant shall, in writing, give the affected Site Owner 48 hours' notice of its intent to make such routine repairs, service or maintenance, and Owner shall have 48 hours to give Declarant written notice of its consent, which consent shall not be unreasonably withheld. The non-exclusive easement for access, ingress, egress and road right-of-way purposes hereinabove declared and created over the Roadway shall be an appurtenance and shall run with the title to each Site within the Property and each

parcel of real property from time to time declared to be a part of the Property.

Section 2. Utility Easements. There are hereby declared, created and reserved for the benefit of the Association, the Declarant, and each Owner of each Site and any public or private provider of utility services to the Property and their respective invitees, successors and assigns: (1) easements for utility purposes (and for other related purposes incidental to the development of the Property approved by the Association), within the paved or unpaved portion of the Roadways (hereinafter referred to as the "Utility Easement Areas"); and (2) an easement and license to enter upon such Utility Easement Areas and adjacent land for the purpose of constructing, installing, replacing, inspecting, maintaining and repairing any and all utility lines and facilities located within such Utility Easement Areas; and (3) such other easements as may, from time to time, be declared and dedicated by Declarant by separate instrument or included on a plat for all or any portion of the Property owned by Declarant. The utilities contemplated to be served by such utility easements may include, without limitation, electric power, natural gas, telephone, cable television, sewer, potable water, and storm-water.

Section 3. Existing Easements. All easements reserved for the benefit of Declarant created herein shall not be terminated upon the termination of Declarant's Class B Membership.

Section 4. Future Easements. Each Owner of a Site and its respective successors and assigns by acceptance of a deed of conveyance subject to this Declaration agree to cooperate with Declarant, the Association and with each other in the planning and granting of such other easements as may be reasonably necessary or desirable for the future development of the Center, and which do not materially interfere with the present uses or future development of the Site proposed to be encumbered by any such easement. The easements contemplated by this Section 4 may include, without limitation, those easements, including, but not limited to, utility, drainage, right-of-way, mass transit or other easements, related to the orderly development of the Center.

Section 5. Waiver. All Owners of Sites, Declarant for damages, if any, arising out of a negligent or inaction by any party in connection with construction, installation, operation and repair of utilities or on account of any temporary or permanent shortage, disruption or other inconvenience caused thereby (except for willful misconduct or gross negligence by Declarant) are hereby waived by all Owners, Declarant and their Assignees and Licensees.

Section 6. Enforcement. The provisions of this Declaration set forth herein shall be enforced by the Association and Declarant shall be deemed to have agreed to enforce the same. Declarant, the Association and the Owners of Sites shall be bound by the terms and conditions of this Declaration and the easements herein provided.