

Amended and Restated
PROTECTIVE COVENANTS AND
RETAINED EASEMENTS FOR
“495 COMMERCE CENTER”

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HIDALGO §

THIS DOCUMENT HEREBY REPLACES IN ITS ENTIRETY THE PROTECTIVE COVENANTS AND RETAINED EASEMENTS FOR 495 COMMERCE CENTER, RECORDED AT DOCUMENT NUMBER 965057 ON APRIL 27TH 2001 AND IS EFFECTIVE AS OF APRIL 19, 2001.

THAT **495 COMMERCE CENTER PARTNERS, LTD.**, a Texas limited partnership, acting by and through its general managing partner, Synergis, L.L.C., a Texas limited liability company, and its general partner, Mayfair Properties, L.L.C., a Texas limited liability company, as the owner of a tract of land described on Exhibit A hereto, in order to adopt a uniform plan for the orderly development of said land, does hereby impose thereon the following covenants, and retains the easements described herein, which shall run with said land and be binding upon every purchaser, grantee, owner or lessee of all or any part of said land and any building in or on any part thereof, and upon the respective heirs, successors and assigns of each such purchaser, grantee, owner or lessee.

1. Definitions. The following definitions shall be applicable to these Protective Covenants:

(a) Architectural Control Committee (“ACC”) shall mean a committee composed of not less than three (3) persons or entities from time to time appointed by the Developer to perform the duties and responsibilities hereinafter set forth.

(b) "Assessments" shall mean and refer to the Association's charges for funding operations of the Association, calculated and levied in accordance with these Protective Covenants. The Assessments shall consist of:

(1) "Base Assessments," which shall mean and refer to Assessments computed to fund the Common Expenses of the Association.

(2) "Special Assessments," which shall mean and refer to Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described improvement associated with the Common Facilities. Special

Assessments shall not be levied for the cost of the initial construction of the original improvements in the Protected Tract.

(3) "Specific Assessments," which shall mean and refer to Assessments applicable to a specific Building Site.

(c) "Association" which shall mean a non-profit corporation organized for: (i) the purpose of preserving and maintaining the uniform standards and quality, as well as the natural beauty and aesthetic value, of the Protected Tract and any Building Site therein, and any other property which shall hereafter be designated by the Developer as entitled to the protection and benefit of these Protective Covenants; and (ii) oversight of the Common Properties.

(d) "Building Site" shall mean the minimum area of land within the Protected Tract on which a building may be erected, the configuration of which shall be determined by the Developer. A conveyance by the Developer of any portion of the Protected Tract subject to these Protective Covenants shall be conclusive evidence that such portion described in such conveyance is a Building Site.

(e) "Common Expenses" shall mean and refer to the costs of operating the Association and performing its responsibilities attributable to the Protective Covenants on the Protected Tract, estimated and funded in accordance with the terms of these Protective Covenants.

(f) "Common Facilities" shall mean and refer to the landscaping irrigation systems located in the Common Landscaped Areas and the Common Open Areas, the storm water drainage and filtration system located in the Common Open Areas (including the water features and storm water storage facilities), entry graphics and features, Development Signage, other signage associated with the Common Open Areas, buildings, gates, and equipment, if any, installed in the Common Open Areas, but excluding improvements of any kind installed by Building Site owners in the Common Open Areas, and other improvements hereafter designated by the Association as "common facilities."

(g) "Common Landscaped Areas" shall mean those portions of the Protected Tract or in the vicinity of the Protected Tract and so designated by the ACC from time to time in the landscaping plan for the Protected Tract.

(h) "Common Open Areas" shall mean and refer to the median(s) located within streets or rights-of-way dedicated by the Developer to the public or Association within the Protected Tract, the lake, ponds, and other water features, drainage ways, sumps, and drainage facilities and water storage facilities serving the Protected Tract, or conveyed to the Association, but excluding any such improvements located on Building Sites which are owned and controlled by Building Site owners, and other areas within the Protected Tract so designated as a "common open area" by the Association from time to time.

(i) "Common Properties" shall mean and refer, collectively, to the Common Open Areas, the Common Landscaped Areas, and the Common Facilities.

(j) "Developer" shall mean 495 Commerce Center Partners, Ltd., a Texas

limited partnership, its successors and assigns, as well as any person, firm or corporation from time to time appointed by the Developer by instrument filed for record in the Official Records of Hidalgo County, Texas, as its agent and attorney-in-fact, to perform any act, function or duty of the Developer hereunder, which power is revocable by the Developer only by the instrument filed for record in the Official Records of Hidalgo County, Texas.

(k) "Excusable Delay" shall mean a period of time equal to the duration of delays caused by fire, act of God, shortage of labor or materials, strike, lockout, casualty, or other conditions beyond a person's reasonable control.

(l) "Landscape Corridor" shall mean that portion of a Building Site located within twenty-five feet of the back of curb of a public street or twenty feet back of curb on private streets.

(m) "Majority Vote" or "Majority Vote of the Members" shall mean and refer to the affirmative vote on any matter brought before the Association members of (i) fifty-one percent (51%) or more of the votes entitled to be cast by Members in Good Standing, present and voting in person or by legitimate proxy, at a meeting of the Association membership duly called at which a quorum is present, and otherwise convened and conducted in accordance with the Bylaws of the Association.

(n) "Master Landscape Development Guidelines" shall mean a written document approved by the ACC establishing comprehensive landscape design, installation and maintenance criteria for the development of those areas within the Protected Tract which are to be landscaped in accordance with these Protective Covenants.

(o) "Members in Good Standing" shall mean and refer to the owners of any portion of the Protected Tract who are not: (i) in default in payment of any Assessment levied by the Association in accordance with the terms hereof; (ii) nor in receipt of a notice of default from the Association pertaining to any default hereunder, or any rule or regulation promulgated by the Association, which default remains uncured in the sole opinion of the Association; (iii) nor named as a party in any pending legal action, suit or proceeding involving an alleged violation of these protective covenants brought by Developer, the Association, or any other party with standing to enforce any provision hereof.

(p) "Protected Tract" - The tract of land described in Exhibit A hereto, and any future contiguous tracts acquired hereafter and made a part hereof.

(q) "Protective Covenants" - The covenants imposed on the Protected Tract by this instrument.

(r) "Supermajority Vote" shall mean and refer to the affirmative vote on any matter brought before the Association membership of (i) two-thirds of the votes entitled to be cast by Members in Good Standing, present and voting in person or by legitimate proxy, at a meeting of the Building site owners duly called at which a quorum is present, and otherwise convened and conducted in accordance with the Bylaws of the Association.

2. Permitted Uses. The Protected Tract shall be used solely for one or more of the following purposes:

(a) A site for buildings designed and occupied for general office purposes, which buildings may have tenants or occupants providing ancillary services to occupants and visitors of such office building including, without limitation, ancillary services such as financial institutions and cafeterias;

(b) A site for buildings designed and occupied for light industrial purposes, including, without limitation, manufacturing, warehousing, distribution operations and research facilities;

(c) Surface parking of vehicles or parking garage(s) for vehicles in conjunction with any of the permitted uses specified in these Protective Covenants; and

(d) Other uses that are neither specifically authorized by this Section nor specifically prohibited by these Protective Covenants will be permitted as to portions of the Protected Tract upon the consent of the ACC. Approval or disapproval of any such other proposed use will be based upon the effect of such use on other portions of the Protected Tract, lands adjacent thereto and upon the owners and occupants thereof, as determined by the ACC in its sole discretion.

(e) Without limiting the forgoing permitted uses:

(i) That portion of the Protected Tract abutting FM 495 (Pecan Avenue) may be used for retail purposes, including strip malls, convenience stores with petroleum product sales, restaurants, recreational businesses and all other uses permitted within the C1, C2, or C3 Zoning Classification of the City of McAllen;

(ii) The Protected Tract may be used for federal, state or local government offices;

(iii) The Protected Tract may be used for executive, managerial, accounting, or distribution offices, whose principal business operations constitute a permitted use, whether or not such business operations are actually conducted on the Protected Tract;

(iv) The Protected Tract may be used for research and development facilities associated with technological products and services, as well as the design, manufacturing, and integration of commercial/defense, space, scientific/medical, and/or high technology professions or systems, and related activities; and

(v) The Protected Tract may be used for manufacturing, processing or assembling of products, devices, assemblies, systems, equipment and/or component parts thereof, whether for consumer, commercial/industrial, professional, or military use.

3. Prohibited Uses. The following operations and uses shall not be permitted on any portion of the Protected Tract:

(a) Any use that is offensive by reason of odor, gas, fumes, dust, smoke, noise, pollution or vibration or that otherwise constitutes a nuisance or is hazardous, dangerous or unsafe;

(b) Commercial excavation of building or construction materials (but excluding excavation in connection with construction of improvements on the Protected Tract);

(c) Dumping, disposal, incineration, or reduction of garbage, sewage, dead animals, or refuse, or the construction or operation of water or sewage treatment plants or electrical substations (excluding such plants as may be operated by public utility companies or by utility or similar districts providing services to the Protected Tract);

(d) Smelting of iron, tin, zinc or other ores, or refining of petroleum or its products;

(e) Storage in bulk of junk or used materials;

(f) Use of explosives in any form;

(g) Retail sales of goods and services to the public involving the operation of junkyards, operation of stockyards, or slaughterhouses;

(h) Bars (unless incidental to the operation of a restaurant), cocktail lounges, saloons, dance halls, discotheques, topless bars, or nightclubs, or businesses engaged in the sale or rental of pornographic materials of any sort;

(i) Produce stands, portable or temporary food concession stands;

(j) Amusement parks, circus or carnival grounds, commercial or recreational amusement developments, tents, or drive-in theaters;

(k) Automobile repair facilities or vehicle body shops, painting facilities, engine rebuilding, and like facilities; and

(l) Livestock, poultry or other animal operations of any kind.

(m) In addition:

(i) No nuisance shall ever be erected, placed, or suffered to remain upon the Protected Tract, and no owner or occupant of any portion of the Protected Tract shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other owner or occupant. No privy, cesspool or septic tank shall be placed or maintained on the Protected Tract;

(ii) No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain on the Protected Tract. Without the approval of the ACC, no incinerators shall be allowed on the Protected Tract. The owners of any portion of the Protected Tract shall remove such prohibited matter from its Building Site at regular intervals at its expense, and prior to such removal all

such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from neighboring property or public or private streets. Reasonable amounts of construction materials and equipment may be stored upon the Protected Tract for reasonable periods of time during the construction of improvements thereon;

(iii) Subject to the rights of mineral owners other than Developer, neither Developer, nor any party claiming by, through or under Developer, shall permit oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, nor oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, nor derricks or other structures for use in boring for oil, natural gas, mineral or water to be erected, maintained or permitted in the Protected Tract;

(iv) No noise which would be annoying, harmful, or injurious to a person of normal sensibilities shall be permitted outside of a 100 foot interior setback from the property lines of any Building Site located on the Protected Tract;

(v) No vibration or shock shall be permitted which could, over a period of time, result in damage to property or injury to person, including underground utilities, equipment, inventory or equipment of any owner or occupant of any other portion of the Protected Tract;

(vi) Any process causing intense heat or glare shall be performed within an area designed to eliminate its detection from the property lines of any Building Site located on the Protected Tract;

(vii) Emissions of smoke, gas dust, odor, fumes, aerosols, particles, products of combustion, or other atmospheric pollutants (including toxic or noxious materials) from the Protected Tract are permitted only if such emissions comply with all applicable local, state and federal air quality statutes and regulations. Notwithstanding the foregoing, visible smoke emissions that exceed lineman No.1 on the Ringlenann Chart of the U.S. Bureau of Mines (other than motor vehicle emissions from conveyances of transportation) shall not be permitted. Wind born dust, spray and mists originating from the Protected Tract shall also comply with all applicable local, state and federal air quality statutes and regulations. Odors from emissions on the Protected Tract that are not confined to a specific Building Site are not permitted unless such emissions conform to statutes and regulations of local, state and federal air quality standards;

(viii) No exterior security bars or caging, aluminum foil, reflective film (excluding ACC approved reflective glass), paper, or similar treatment shall be placed on windows or glass doors at any time; and

(ix) Any other activity or use that in the sole discretion of the ACC is obnoxious to or out of harmony with a first-class office and industrial land development shall not be permitted on any portion of the Protected Tract. No use shall be permitted which is in violation of the laws of the United States or the State of Texas or any subdivision thereof.

Approval by the ACC of a particular use shall be conclusive evidence of compliance with these Protective Covenants to the extent that such use is not in violation of any law or ordinance. The ACC is hereby authorized to determine what constitutes prohibited uses. A lack of disapproval of any particular activity shall not be deemed a de facto approval of the ACC.

4. Surface Drilling Waiver. Subject to the rights of other mineral owners, the right of lessees under existing oil and gas leases on the Protected Tract, and the rights of lessees under future oil and gas leases executed by any other mineral owners, the Developer does hereby expressly release and waive, on behalf of itself and its successors, assigns and legal representatives, its right of ingress and egress and other rights of every kind and character whatsoever to enter upon or to use the surface of the Protected Tract or any part thereof, including, without limitation, the right to enter upon the surface of the Protected Tract for purposes of exploring for, developing, drilling, producing, transporting, mining, treating, storing or any other purposes incident to the development or production of the oil, gas and other minerals, in, on, and under the Protected Tract. Nothing herein contained shall ever be construed to prevent the Developer, or its successors or assigns, from developing or producing the oil, gas and other minerals in and under the Protected Tract by pooling or by directional drilling under the Protected Tract from well sites located on tracts other than the Protected Tract. Without limiting the foregoing, the Developer does further hereby expressly covenant and agree that any oil, gas or minerals lease hereafter executed by the Developer in favor of any person, firm or corporation, covering or affecting any portion of the mineral estate of the Protected Tract, shall be expressly made subject to the terms and provisions of this surface drilling waiver.

5. Cable Communications Systems. Developer reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable communications or fiber optic and other similar companies, and Developer shall have the right and power in such agreement or agreements to grant to such company or companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated on the Protected Tract, and Developer does hereby reserve unto itself, its successors and assigns, the sole and exclusive right to obtain and retain all income, revenue and other things of value paid or to be paid by such companies to Developer pursuant to any such agreement between Developer and such companies.

6. Re-Subdivision and Combination of Building Sites. Once a Building Site is established by the Developer, there may be no re-subdivision of a Building Site nor a combination of two or more Building Sites without the approval of the ACC, which approval may be withheld and such approval may be conditioned upon compliance with such additional requirements and covenants as the ACC may reasonably impose.

7. Appointment of the ACC. The members of the ACC shall be appointed and/or removed by the Developer until such time that 75% of the gross acreage associated with the Protected Tract has been conveyed to third parties and converted to Building Sites. Thereafter, the Association shall appoint and/or remove the members of the ACC.

8. Functions of the ACC. No portion of the Protected Tract shall be developed, nor improvements erected, constructed, placed or altered on any portion of the Protected Tract, until plans and specifications in such form and detail as the ACC may deem necessary shall have been submitted to and approved by the ACC in accordance with the terms of these Protective

Covenants. The ACC, by its approval of such plans and specifications, is not responsible for the adequacy of structural or mechanical engineering design or specifications of any improvements. The ACC may from time to time establish development guidelines and standards for site planning, architecture, construction, building materials, sidewalks and landscaping, and, if and when such guidelines and standards are established, the same shall be used as the basis for review and approval or disapproval of plans and specifications. All standards in effect from time to time shall be available in the office of the ACC for review during normal business hours. Any restriction, covenant or standard contained in standards adopted by the ACC after the effective date of these Protective Covenants shall apply only to development and/or construction, reconstruction, or alterations of improvements first commenced after the date such standards were adopted, and shall not apply to, require modification to, variance for, or removal of improvements previously approved by the ACC in accordance with the terms of these Protective Covenants.

9. Reimbursement for Cost of Reviews of Plans and Specifications. The ACC shall have the right to require that the party submitting the plans and specifications for review reimburse the ACC or its agent for the actual costs incurred by the ACC in the ACC's review of the plans and specifications performed at the request of the ACC by an independent contractor or agent appointed by the ACC to perform plan reviews. In conjunction with each submission, the requesting party will be required to deposit with the ACC a retainer in the amount periodically established by the ACC to secure such payment obligations. Each requestor will be billed for the time and expense incurred in such review process and a statement of charges will accompany the letter of approval, disapproval or notice of action taken by the ACC, reflecting the application of the requestor's retainer deposit to the amount due.

10. LIMITATION OF LIABILITY ASSOCIATED WITH PLANS AND SPECIFICATIONS. NEITHER THE DEVELOPER, THE ASSOCIATION, THE ACC, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL BE LIABLE IN DAMAGES TO OWNER OF A BUILDING SITE OR ANY THIRD PARTY SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY PROPOSED USE OF THE PROTECTED TRACT OR THE PLANS OR SPECIFICATIONS ASSOCIATED WITH SUCH PROPOSED USE. EVERY OWNER OF ANY PORTION OF THE PROTECTED TRACT, OR OTHER PERSON WHO SUBMITS PLANS OR SPECIFICATIONS ON BEHALF OF AN OWNER, AGREES THAT SUCH PARTY WILL NOT BRING ANY ACTION OR SUIT AGAINST THE DEVELOPER, THE ASSOCIATION, THE ACC, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OR ANY OF THEM, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, ACT, OMISSION, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

11. Architectural and Design Control. Construction or alteration of any improvements within the Protected Tract shall meet the requirements set forth in these Protective Covenants and any additional standards from time to time established by the ACC. All construction on and development within the Protected Tract shall be subject to the approval of the ACC. As used in these Protective Covenants, the terms "construction, alteration, and/or development" includes

every aspect of design and construction of improvements, including preliminary clearing, staking, excavation, grading, deposit of fill material and other site work on a Building Site, as well as any change in the exterior color, shape or building material for any improvement previously approved by the ACC.

No building or other improvement shall be constructed on the Protected Tract and no changes shall be made in any building or improvement which may hereafter be constructed thereon until three (3) sets of the plans and specifications therefore (including a site plan, exterior elevations, colors, construction materials, structural design plan, grading and drainage plan, site landscaping and irrigation, all exterior lighting, site signage, plans for off-street parking of vehicles and utility layout, as well as a detailed list, if applicable, of all requested variances) have been submitted to and approved by the ACC. The plans and specifications shall be sealed by a licensed architect, engineer or building designer, as appropriate, and otherwise finished and complete in all respects.

The ACC approval process shall extend to type and quality of materials, harmony of exterior design and colors with existing structures on the Protected Tract or in the area and location with respect to topography and finished ground elevations. The person or entity submitting plans and specifications for review shall be advised in writing of (i) the approval thereof by the ACC or (ii) the segments or features thereof which are deemed by the ACC to be inconsistent or not in conformity with these Protective Covenants and said guidelines and standards. If, within forty-five (45) days after the receipt of such plans and specifications by the ACC, notice of the disapproval of or objection to features thereof is not received, the approval of the same by the ACC shall be deemed to have been given.

All buildings on the Protected Tract shall be built and all other improvements thereon shall be made in accordance with plans and specifications as the same may have been finally approved by the ACC. Notwithstanding the ACC's failure to either approve or disapprove the plans and specifications for improvements to be constructed on the Protected Tract, no improvements or buildings shall be constructed on any portion of the Protected Tract unless all aspects thereof meet all the requirements of these Protective Covenants. Further, in the development of any portion of the Protected Tract and in the construction of improvements thereon, the owner of such property must comply with all applicable laws, rules, regulations, zoning ordinances, building codes and governmental requirements, including, without limitation, those related to the installation of sidewalks and similar amenities.

The ACC shall have the continuing right to require that the party submitting the plans and specifications to the ACC submit such other information as may be deemed necessary or desirable in review of the requestor's proposed development and construction. The submission of such supplemental information shall recommence the ACC's 45-day review period.

The ACC may, at its sole discretion, permit plans and specifications to be submitted in scheduled phases and may, but shall not be required to, give conditional or partial approvals to plans or specifications; provided, however, no permitted delay in the submission of plans or specifications and no conditional or partial approval shall in any way obligate the ACC to any subsequent of additional approval, waiver or variance.

12. Remodeling. Consent of the ACC is not required for remodeling or redecorating the interior of a building located on the Protected Tract so long as such changes are not visible from the exterior of the building. Repainting of exterior building walls may also be performed without obtaining the consent of the ACC so long as such repainting is done in accordance with

the color schemes originally approved by the ACC for such site.

13. Buildings. In general, each Building Site shall have at least 2.0 square feet of land area for each square foot of building area. Exterior walls of all buildings shall be predominantly masonry construction, its equivalent or better. No building front, or other wall exposed to a perimeter, or interior street, may be covered with sheet or corrugated metal, except as may be approved by the ACC. Smooth finish paint shall not be considered an approved finish, except in limited applications as approved by the ACC. The use of the following materials for exterior walls is encouraged, as appropriate to the building design: brick masonry; natural stone masonry; architectural concrete block; sand blasted, textured, or other decorative natural concrete finish; glass (percentage of glass may be limited by the ACC); architectural aluminum or steel panels designed to ensure absence of "oil canning" (colors subject to approval by the ACC); and "Dryvit" or similar composite exterior finish system. Wood shall be limited to trim at doors, windows, framing and soffits. Sheet metals shall be limited to flashings, down spouts, and trim. Roof construction shall be so designed as to prevent ponding of water on the roof. Roofing materials suggested for use within the development are: pre-finished standing seam steel or aluminum with a long life, high performance paint finish; built-up or single ply membranes; copper standing seam roofing; and slate, wood, concrete, fiberglass, or asphalt shingles. When a construction material is specified herein, another material, if approved by the ACC, may be used in lieu thereof.

14. Utilities. No outside pipe, conduit, cable, or line for water, gas, sewage, drainage or steam, shall be installed or maintained above the surface of the ground within the Protected Tract, unless otherwise approved by the ACC. All improvements shall connect to utilities at street or utility easement locations. No owner or occupant of any portion of the Protected Tract shall discharge any chemicals or heavy metals or toxic materials or other effluent into the public sewage system except in compliance with the City of McAllen's "Effluent Discharge Standards".

15. Setbacks. Minimum building/improvement and parking area setbacks shall be the greater of setbacks required by the City of McAllen or as follows (measured at right angles from the property line):

(a) Front Setbacks: Any building or other structure fronting FM 495 (Pecan Ave.), McColl Road or Jackson Road shall have a front setback of at least sixty (60) feet from the curb of a public street, or two (2) times the building height, whichever is greater. The front setback on all other streets shall be at least twenty-five (25) feet from the curb of a public street, or one and one-half (1½) times the building height, which ever is greater.

(b) Side Setbacks: Side setbacks shall be ten (10) feet from the property line, except when a street is at the side of a building, in which case the minimum front setback shall apply. Side setbacks should be sufficiently large enough to provide for landscaping.

(c) Rear Setbacks: Rear setbacks shall be ten (10) feet from the property line, except when a street is at the rear of a building, in which case the minimum front setback shall apply. Rear setbacks should be sufficiently large to provide for landscaping.

(d) Front Parking Setbacks: Front parking setbacks shall be twenty-five feet from the curb of a public or private street.

The following improvements are excluded from the setback requirements: (a) structures below

grade; (b) steps, sidewalks, driveways, or curbs; (c) planters, landscaping walls, fences or hedges not exceeding 4 feet in height; and (d) landscaping, including berms. The ACC may relax setback requirements where necessary or desirable to accomplish a more effective and compatible land utilization. No building or other structure, including, without limitation fences exceeding 4 feet in height, shall be erected nearer to any street or Building Site side or rear property line than is permitted by the applicable setback lines herein established.

16. Parking and Loading Dock Requirements. Adequate vehicle parking spaces, including, without limitation, spaces for employee, customer and visitor parking, shall be provided on each Building Site and all such parking areas shall be internally drained, permanently surfaced with concrete or asphalt, and curbed with concrete. To the maximum extent possible, parking should be located at the sides and rear of buildings. However, when appropriate, parking will be allowed in front of buildings, if adequate setback and landscaping provisions are made, as specified within the Master Landscape Development Guidelines. Minimum parking requirements/spaces shall be as follows:

(a) Parking and loading areas are to be paved with concrete or asphalt, and curbed and guttered with concrete, and be internally drained, with specifications subject to approval by the ACC;

(b) The minimum requirements for passenger parking areas shall be 4" thick reinforced concrete or equivalent asphalt cross-section. For driveways, loading areas, and maneuvering space subject to truck traffic a minimum of 5" of reinforced concrete shall be used;

(c) Minimum parking requirements shall conform to the greater of City of McAllen requirements, or the following:

(i) Warehouse: One (1) parking space for each one thousand (1,000) square feet of warehouse space for the first 50,000 square feet of warehouse space, plus one (1) parking space for each warehouse, assembly worker, or shop employee;

(ii) Production or Manufacturing: One (1) parking space for each one thousand (1,000) square feet of production or manufacturing space for the first 50,000 square feet of production or manufacturing space, plus one (1) parking space for each production or manufacturing employee;

(iii) Office: one (1) parking space for each two hundred and fifty (250) square feet of gross area used for office space;

(iv) Restaurant: One (1) parking space for each 2½ seats within a restaurant;

(v) Banking: One (1) parking space for each two hundred and fifty (250) square feet of gross floor area of banking facilities; and

(vi) Retail: One (1) parking space for each three hundred (300) square feet of gross floor area of retail space.

(d) Individual parking spaces must have a minimum width of 9', and a minimum length of 18'. Handicap parking spaces shall conform in size, location and number with

the City of McAllen requirements. The minimum maneuvering depth behind a parking space must be the greater of 24' (measured at a 90 degree angle) or meet City of McAllen requirements or Texas Assessability Standards, whichever is greater; and

(e) Design and construction of parking areas should provide for a reasonable mix of full size, mid size and compact size parking spaces.

No use shall be made of any portion of the Protected Tract or any improvements constructed thereon which requires or is reasonably expected to require or attract parking in excess of the capacity of the facilities maintained for parking on such property. Parking will not be permitted on any street or at any place other than designated parking areas shown on the plans and specifications approved by the ACC, and the owner of each Building Site shall be responsible for compliance by its respective tenants, employees, and visitors with the parking requirements of these Protective Covenants. The determination of whether or not a Building Site has adequate off-street parking facilities shall be in the sole discretion of the ACC.

The owner of each Building Site shall, at its expense, cause to be installed and maintained, in compliance with applicable law and reasonable standards established by the ACC, adequate no-parking and other traffic control signs on public streets adjacent to such Building Site. All parking areas shall be partially screened from public view with approved fencing, or berms and shrubs of type and species and in a manner approved by the ACC.

Unless otherwise approved by the ACC prior to construction, parking will not be permitted in front of any front parking setback line.

To the extent that appropriate governmental authority may from time to time require more parking spaces than those required by these Protective Covenants, such governmental requirements shall control, but the minimum parking requirements established by these Protective Covenants shall never be reduced except by approval of the ACC.

Variations from the parking requirements set forth in these Protective Covenants may be made only upon the review and approval of the ACC, but shall not conflict with the minimum parking requirements as set forth by the City of McAllen.

Loading docks must have a minimum 10' width at the dock door, incorporating a 24' minimum driveway width, and a 100' minimum depth. Loading docks will not be permitted to face any adjacent street and provision must be made for all loading and unloading on those sides of a building which do not face a street; provided, however, in any instance in which a building will face streets on two or more sides, a loading dock or docks will be permitted on the side of such building farthest from the frontage street. All loading docks must be screened from public view in a manner approved by the ACC. In no event will the ACC approve loading docks that front on FM 495 or McColl Road. Loading docks fronting on Jackson or Hackberry are discouraged, but may be permitted with extensive screening.

17. Driveways. Driveways shall be paved and curbed and guttered with concrete. Driveway approaches shall not be permitted within thirty (30) feet of a street intersection, or within ten (10) feet of a property line. One (1) driveway curb cut shall be permitted per Building Site, with one (1) additional driveway curb cut permitted for Building Sites wider than 150'. Driveways located adjacent to public streets shall include colored concrete corner treatments of a width and length, and constructed of such materials, as the ACC may from time to time require. The maximum width for driveways shall be 36'. Minimum driveway widths are as

follows:

- (a) Single lane passenger driveways - 14';
- (b) Double lane passenger driveways - 22'; and
- (c) Driveways where truck traffic is expected - 30'.

18. Lighting. Lighting shall be compatible and harmonious throughout the Protected Tract. All exterior walls facing public or privately dedicated streets shall be illuminated. All parking areas and walkways between and around buildings shall be appropriately illuminated to provide an average lighting level of at least two (2) foot-candle, and shall be provided by high intensity discharge metal halide sources unless otherwise approved by the ACC. All exterior illumination should be designed and positioned to be from "non-apparent" sources, and to avoid glare and light intrusion. Exterior fronts of buildings shall be illuminated to provide average overall lighting of seven (7) foot-candle. Sides of buildings exposed to streets should have landscape lighting. Exterior illumination shall be designed to light only buildings, parking areas and walkways and shall not produce glare on adjacent streets or land. All ground-level flood-lighting fixtures shall be depressed or screened from public view in a manner approved by the ACC. Parking area lighting, arcade lighting and all other illumination shall be subject to the approval of the ACC.

19. Antenna. Antennae, dishes, transmission or receiving devices, or any other electronic transmission equipment shall not be located on the Protected Tract, including building roofs, without the consent of the ACC. If approved, such devices, shall be screened in a manner required by the ACC.

20. Development Signage. The Developer reserves the exclusive right to design, erect and maintain signs at the main entrances to the Protected Tract identifying the development ("Development Signage"). Such signage shall not include advertising for any business in the Protected Tract. Once constructed, the Development Signage shall be included in the Common Facilities.

21. Building Identity Signage. Subject to approval from the ACC, the owner of each Building Site may design, erect and maintain: one internally illuminated on ground, site sign with two facings, not to exceed a height of 18' feet above grade level for perimeter retail sites or 7' above grade for interior park signage. The perimeter retail signs shall not exceed 160 square feet per side and the interior park signs shall not exceed 70 square feet per side. Also subject to the approval of the ACC each building owner may install one internally illuminated Tenant Identity sign per retail tenant, not to extend more than 15" from a building wall or facade, not to extend above or beyond the cave height or corner of the wall to which it is attached, not exceed 3' in height or 90 square feet in area, and not cover more than 10% of the building wall on which such signage is attached; and a business logo sign of reasonable size, compatible in proportion and scale with other signage authorized on the Building Site. Incidental signs, not to exceed 2' by 3' each in size, for such purposes as vehicular circulation, identification of buildings (i.e., Building #4) pedestrian circulation, and parking stalls, shall be permitted, with approval from the ACC. Incidental signs shall have a maximum height of 6 feet above grade level. All signage on a Building Site must be of the same style, material, and letter type. Flashing, moving character, neon, strobe lighted, and/or banner type signs are prohibited. No signage may be affixed to any glass, or located within the interior of a building, which is visible from an adjacent Building Site. Ground mounted signs may not be closer than 10' from any property line without ACC approval

and no closer than 5' from any driveway or parking area. All signage shall comply with the Zoning and Sign Ordinance of the City of McAllen and/or The 495 Commerce Center Signage Guidelines.

22. Additional Signage Requirements. Prior to erecting any sign, detailed drawings and specifications for such proposed sign, including, without limitation, site information signs, shall be submitted to the ACC for its approval. All signs, both temporary and permanent, which are visible from a public right-of-way within the Protected Tract, including signs associated with leasing, selling or construction of improvements, shall conform to overall sign guidelines established by the ACC and the design and material of every sign on the Protected Tract must be approved by the ACC. No mobile or portable sign shall be permitted. No signs may be painted on buildings or other structures unless approved by the ACC. No sign (other than traffic control signs and informational signs erected by or with the permission of the Association) may be erected in any street right-of-way or other easement without the consent of the ACC and the owner of the Right of Way . With the consent of the ACC, temporary signs may be erected in the setback areas of a Building Site for the sole purpose of the advertising the leasing of or businesses to be conducted thereon, and such signs may be larger and of a different character than permanent signs. All temporary signs must be removed when the principal building on the applicable Building Site is substantially completed, if owner occupied, or if space in the building is to be leased, substantially leased. If, at any time, the purchaser, owner, user or lessee of any Building Site shall be in violation of the signage requirements, the Association, without being deemed to be guilty of a trespass and without being otherwise liable to such purchaser, owner, user, lessee, or any other person, may enter upon the Building Site or any part thereof and may remove any sign not complying with these Protective Covenants or not previously approved as herein required. For purposes of these Protective Covenants, "signs" shall include, without limitation, flags, flagpoles, awnings, canopies and pylons. All costs incurred by the Association in removing signs that do not comply with these Protective Covenants, together with interest thereon, at the maximum lawful rate, from the date the costs are incurred until paid, shall be due and payable, on demand, by the owner of the applicable Building Site. The payment of such sums shall be secured by the lien retained in these Protective Covenants as if such costs were incurred in performing maintenance on such Building Site.

23. Landscape Installation. The ACC shall establish the Master Landscape Development Guidelines for the Protected Tract. The Developer shall install landscaping and irrigation in all medians within the public streets in the Protected Tract and in the Common Landscaped Areas. Once installed, such improvements shall be maintained and replaced (to the extent required) by the Association. Landscaping, underground irrigation and berms for all open, unpaved spaces within a Building Site, including, but not limited to such portion of the Landscape Corridor located within a Right of Way but between the sidewalk and the lot line, and front, side and rear building set-back areas, shall be installed by the Building Site owner, at its sole cost expense, in accordance with the Master Landscape Development Guidelines. Such landscaping shall include, without limitation, visual scenery required by these Protective Covenants and the Master Landscape Development Guidelines. Installation of the required landscaping and irrigation within a Building Site must be completed within thirty (30) days following the occupancy or substantial completion of any building, whichever occurs first, subject to reasonable extensions for Excusable Delay. If such required landscaping and irrigation is not timely installed, the Association may cause the same to be installed at the expense of the Building Site owner, in the same manner and with the same effect as if such installation were maintenance required by these Protective Covenants. The Building Site owner shall require its landscape contractor to guarantee for a minimum period of on (1) year all trees installed on the Building Site and for a minimum period of six (6) months all other plants

other than annuals and grass, with such periods to begin upon the date such installation is satisfactorily completed in accordance with the Master Landscape Development Guidelines. The Master Landscape Development Guidelines shall incorporate the following minimum requirements:

- (a) Landscaping and irrigation plans for each Building Site shall be submitted for approval by the ACC. The plan shall include design and list of plant materials and complete plans for an underground landscape watering system. Consideration should be made for water conservation when designing and selecting watering systems;
- (b) Landscaping shall comply with the current guidelines as set forth by the City of McAllen, but shall cover not less than 10% of a Building Site;
- (c) At least 50% of the required landscaping area shall be located within the paved surface area on a Building Site, or within 10' of the edge of the paved surface area;
- (d) For each 10,000 square feet of parking area, a minimum of one landscaped area of not less than 45 square feet shall be located and reasonably distributed throughout the paved area;
- (e) Earthen berms shall be required along street frontages and as a part of screening treatments;
- (f) If approved by the ACC, any building with truck loading on the front of the building must also include a landscaped earthen berm with an average height of 4'. Where truck loading occurs on the side of a building landscaped earthen berms shall be built with an average height of 3';
- (g) Screening of parking areas landscaping with hedges at least 24" in height may be combined with landscaped earthen berms, to provide overall screen height of 3';
- (h) Front yard landscaping with trees of a minimum of 3" inch caliper trunks, which shall be located between 15' to 30' apart, with an average spacing of not more than 20' along the street right-of-way;
- (i) A minimum of 6 trees of a minimum 4" caliper trunk shall be placed at the front of each building located on a Building Site;
- (j) Landscaped planting "feature" areas shall be placed to mark entrance points to parking areas and at building entrances;
- (k) All trees and plants shall be specimen quality No. 1 quality or better nursery stock in accordance with the required standards outlined in the American Standard for Nursery Stock, or similar publication approved by the ACC;
- (l) Landscape vegetation elements shall be of the "long lived variety." Short lived materials (seasonal color) are to be utilized only as a supplement to longer life elements, and shall not be allowed to remain in place once their useful life is terminated; and

(m) All planting shall conform to the applicable standards of good practice of the American Society of Landscape Architects or such other industry standard as may be approved by the ACC.

24. Screening. No articles, goods, materials, storage tanks, refuse containers, or like equipment shall be permitted in the open or exposed to public view, or view from the ground floor of adjacent buildings. All retail sales equipment, fixtures and merchandise shall be displayed only in the interior of a building located on a Building Site unless otherwise approved by the ACC.

Water towers, cooling towers, communications towers, and other structures or equipment shall be architecturally compatible with the aesthetics of the Protected Tract or effectively shielded from public view, as much as practical in the sole opinion of the ACC.

If it shall become necessary to store or keep materials or equipment outside of a building, they must be screened from view by a screen of a height at least equal to that of the materials or equipment being stored, but not less than eight (8) feet in height. Adequate screening must also be provided to shield such stored materials and equipment from view from the ground floor level of all adjacent buildings. All storage shall be limited to the rear two-thirds of a Building Site and under no circumstances shall any materials or equipment be stored between the property lines of a Building Site and the applicable building setback from any street. Water towers, storage tanks, processing equipment, stand fans, skylights, cooling towers, vents, roof top mechanical equipment, parapet walls and any other structures and equipment on a Building Site or on the improvements thereon must be architecturally compatible (as determined by the ACC) or effectively shielded from view by an architecturally sound method approved by the ACC.

All utility and service system components and trash pick-up stations must be integrated with the building they serve or must be screened by a fence or wall of compatible materials approved by the ACC and must not be visible above such screening. Ground or pad mounted equipment, such as power transformers and air conditioning equipment, shall be screened from view by fencing or landscaping, all of which must be approved by the ACC.

No boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, unmounted camper bodies, boat rigging, or other vehicles or associated equipment of a recreational or commercial nature shall be parked or stored permanently or semi-permanently on any Building Site unless properly screened from public view in a manner approved by the ACC.

Rooftop mechanical equipment, piping, flashings, and interior parapets exposed to any view on the building shall be painted to match the roof surface, or other adjacent building material. All mechanical, electrical, or other equipment shall be effectively screened from view from any public or privately dedicated street by an architecturally compatible feature, landscape materials, or earthen berm. Any and all utility lines and/or wires not within a building shall be constructed or placed and maintained underground.

Loading docks, trash containers, building maintenance equipment or storage areas, or other service area necessary to the improvements located on a Building Site shall be effectively screened from view from any public or privately dedicated street by an architecturally compatible walls, landscape materials, earthen berm, or combination thereof. Screening of loading dock areas perpendicular to public or private streets shall extend at least 35' from the

building. At least 25% of the screen shall be not less than eight (8) feet in height.

Adequate area shall be required on each Building Site, and designed so that all loading and maneuvering of trucks and other vehicles (including dumpster and private trash disposal service vehicles) is conducted solely on the Building Site, rather than utilizing an adjacent street.

25. Fences. No fences of any kind shall be permitted on the front property line of a Building Site, nor on any side property line of a Building Site which site abuts a street. Subject to approval of the ACC, fences are permitted on side and rear property lines or easements lines located on a Building Site. Acceptable fences types are solid masonry, or concrete, or architectural aluminum or steel. Wooden or barbed wire fences are not permitted. Fence height shall be at least 6'. Landscaped berm and/or heavily planted landscaped areas for effective screens are permitted in lieu of fences.

26. Window Treatments. No draperies or other window or door coverings may be installed on any improvements located on a Building Site which are viewable from the exterior of the improvement unless the color and quality of the draperies or other coverings is approved by the ACC.

27. Temporary Structures. No temporary building or structure other than construction offices and structures related to construction shall be installed or maintained on any Building Site during building or improvement construction without the approval of the ACC. All temporary structures used for construction purposes must receive prior approval from the ACC with regard to location and appearance, and must be removed promptly upon substantial completion of construction of the building or improvement to which they relate. Notwithstanding the foregoing, while any portion of the Protected Tract is being developed and marketed (the "Development Period"), the Developer shall have and hereby reserves the right to reasonable use of the Common Properties within the Protected Tract in connection with the promotion and marketing of land within the boundaries of the Protected Tract. Without limiting the generality of the foregoing, Developer may erect and maintain such signs, temporary buildings, and other structures as Developer may reasonably deem necessary or proper with promotion, development, and marketing and maintenance activities during the Development Period. In addition, during the Development Period, the Developer shall have the right to allow any one or more designated third party builders the right to erect and maintain such signs, temporary buildings, and other structures as Developer may deem necessary or proper in connection with such third party's promotion, development, and marketing of Building Sites. The approvals granted by the Developer as described above are discretionary and may be revoked in the manner specified in an agreement between Developer and such third parties, or, if there is no agreement, such third parties shall be given at least ten (10) days' notice to comply with any revocation of approval by the Developer.

28. Easements. No structure shall be erected on any easement within the Protected Tract, and no improvement may be placed within such easements without the approval of the ACC and the holder of such easement rights. Easements may be crossed by driveways and walkways upon receipt of the approval of the holder of such easement rights and provided appropriate measures are taken to protect the pipes, lines and installations within such easements. Neither the Developer, the Association, nor any member of the ACC, nor the holder of such easement rights, shall be liable for any damage done by them or their respective assigns, agents, employees or contractors to shrubbery, trees, flowers, plantings or improvements located in, on or under the land burdened by such easements. The Developer reserves the right to dedicate for utility easements any or all areas within a Building Site between side and rear building set back lines outward to Building Site property lines.

29. Easements Reserved by Developer. Developer reserves easements for the installation, maintenance, repair and removal of utilities and drainage facilities, over, under and across the Protected Tract. Full right of ingress and egress shall be had by Developer at all times over the Protected Tract for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Developer shall have the right, at any time and from time to time, to assign, convey and transfer in whole or in part the easements and rights reserved under the provisions of this section and to designate and limit the location of any such easements.

30. Maintenance. The owner, and lessee in the case of a Building Site which is ground leased, shall keep the Building Site, premises, buildings, improvements, appurtenances, sidewalks, berms and landscaping thereon, in a well-maintained, repaired, safe, clean and attractive condition at all times. Such maintenance shall include regular trash pickup, mowing, edging of turf areas on the Building Site or in public rights-of-way immediately adjacent to such Building Site as a part of a parkway or the Building Site's front or side yard, weeding of plant beds, fertilizing, weed control, watering of the turf and landscape areas, and painting, repair and/or replacement of damaged screening. Diseased or dead plants or trees must be removed and replaced within a reasonable time. On front lawns and wherever visible from any street, there shall be no decorative appurtenances placed, such as sculptures, birdbaths, birdhouses, fountains or other decorative embellishments unless such specific item(s) have been approved by the ACC. If, in the reasonable opinion of the Association, any such owner or lessee is failing in its maintenance obligation, the Association shall give such owner or lessee, or both, notice of such fact and such owner and/or lessee must, within fifteen (15) days of such notice, undertake the repair and maintenance required to restore said owner's or lessee's property to a safe, clean and attractive condition. Should any such owner or lessee fail to fulfill this duty and responsibility after such notice, then the Association shall have the right and power to enter upon such Building Site through its agents, without liability to such owner (or any lessee, tenant, invitee, customer, or licensee of such owner) for trespass or otherwise, and to perform such repair and maintenance, and the owner or lessee (or both of them) of the Building Site on which such work is performed shall be personally liable for the cost of such work and shall upon demand reimburse the Association for the cost thereof. If such owner or lessee shall fail to so reimburse the Association within twenty (20) days after demand, such cost shall be a debt of such owner or lessee (or both of them), payable to the Association, and all of the same, shall be secured by a lien on such owner's Building Site. Such lien shall be enforceable as any other assessment lien as provided in these Protective Covenants. The duty and responsibility imposed by this Section shall be over and above any maintenance that may otherwise be performable pursuant to these Protective Covenants. All sums advanced by the Association pursuant to this Section shall bear interest at the maximum lawful rate from date of advance until paid.

The Association shall maintain and keep in good repair the Common Properties. The Association shall maintain the Common Properties in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless the Association members agree to discontinue such operation by Supermajority Vote.

The Association may also assume responsibility for maintenance of any Building Site and assess all costs in such maintenance against the benefited Building Site pursuant to these Protected Covenants, as appropriate. This assumption of responsibility may take place either by

contracting with the owner(s) of such Building Site or because, in the opinion of the Association, the level and quality of maintenance then being provided is not consistent with the standards of maintenance established under these Protective Covenants or under the Master Landscape Development Guidelines.

The Association may maintain other property which it does not own including, without limitation, publicly owned property and other property dedicated to public use, within, immediately adjacent to or in close proximity to the Protected Tract if the Association determines that such maintenance is necessary or desirable for operation of the Association in accordance with all the applicable covenants, or is otherwise consistent with the standards of maintenance established under these Protective Covenants or under the Master Landscape Development Guidelines.

In the event that all or any part of the Association's responsibilities for the Common Properties are assumed by any local, state or federal governmental entity, the Association shall be relieved of such responsibility to the extent so assumed; provided the Association may provide additional maintenance or a higher level of maintenance to any portion of the property maintained by any such governmental entity if the Association determines, in its sole discretion, that such additional maintenance is necessary or desirable to maintain the standards of maintenance established under these Protective Covenants or under the Master Landscape Development Guidelines.

There are hereby reserved to the Association nonexclusive blanket easements over the Common Properties and adjacent areas of the Building Sites as reasonably necessary to enable the Association to fulfill its responsibilities under these Protective Covenants, provided, however, such easement shall not unreasonably interfere with an owner's use of the owner's Building Site and will not require the destruction or relocation of any improvements on any such Building Site.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Properties shall be a Common Expense to be allocated among all owners as part of the Base Assessment, subject to the right of the Association to seek reimbursement from the owner(s) of, or other persons responsible for, certain portions of the Common Properties pursuant to these Protective Covenants, other recorded covenants or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Common Properties intended for the exclusive use and benefit of a particular Building Site will be assessed solely against such benefited Building Site, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

31. Landscape Maintenance and Storm Water Drainage. The Association shall maintain all landscaping, berms and irrigation installed in medians within public streets and in the Common Landscaped Areas. Subject to Section 32 hereof, the owner of a Building Site shall, at its sole cost and expense, maintain all landscaping, berms and irrigation required by these Protective Covenants to be installed by the owner of a Building Site. All landscaping installed in the Protected Tract shall be maintained in accordance with the Master Landscape Development Guidelines. No excavation shall be made, and no sand, gravel or soil shall be removed from the Protected Tract, except in connection with the construction of improvements thereon, and upon completion thereof, exposed ground openings shall be backfilled and disturbed ground shall be graded, leveled, and paved or landscaped. Adequate erosion control shall be maintained during construction on a Building Site. All storm water falling on a Building Site must be collected on site into subsurface drainage structures which must discharge into a

storm sewer or other drainage facility approved by the ACC and which complies with applicable laws and regulations.

32. Landscape Easement. The Association is hereby granted an easement and right of way in and to the Landscape Corridor area to maintain, at its sole option, the landscaping in the Landscape Corridor area. In the event the Association determines that uniformity in the landscaping in said Landscape Corridor area is desirable, it shall undertake the maintenance of such landscaping as a Common Expense of the Association. Otherwise the owners of Building Sites burdened by the Landscape Corridor and landscape easement shall maintain the same at their cost in accordance with the requirements of these Protective Covenants and the Master Landscape Development Guidelines.

33. Association Organization. The Developer has established and recorded at filing number 800299676 with the Secretary of State "ARTICLES OF INCORPORATION OF 495 COMMERCE CENTER OWNERS ASSOCIATION INC." Subject to and in accordance with applicable law, the Association shall have members, officers, a board of directors of not less than three (3) persons and by-laws, all as initially determined by the Developer. The members of the board of directors of the Association shall be selected by the Developer to serve staggered terms of not more than six (6) years, and on and after the date that 75% of the gross area of the Protected Tract has been conveyed to third parties and converted into Building Sites, the directors whose terms expire after such date shall thereafter be elected annually by the members of the Association. The members of the Association shall be the Developer and the owner(s) of each Building Site. The Association's initial by-laws shall set forth the manner in which the Association shall be operated and the procedures applicable to its governance and to the conduct of its affairs; including, without limitation, membership, voting, election and replacement of officers and directors and amendment of by-laws. The by-laws, articles of incorporation, books, records and papers of the Association shall, during reasonable business hours, be subject to inspection in the offices of the Association by any member of the Association. Where in these Protective Covenants the approval of the Developer is required as a condition in respect of certain functions or where other consents, waivers or other actions on the part of the Developer are required to be or may be given by the Developer, the Association shall succeed to such of the rights, obligations and functions of the Developer hereunder as the Developer shall from time to time assign or delegate to the Association; provided, however all such rights, obligations and functions of the Developer shall be deemed to have been assigned to the Association when the Developer no longer owns any land subject to these Protective Covenants. Membership in the Association shall be appurtenant to and may not be separated from ownership of the Protected Tract. Any transfer of title to a Building Site, shall operate automatically to transfer membership in the Association appurtenant to such Building Site to the new owner thereof. Each co-owner of a Building Site resulting from any transfer of title to a portion of or undivided interest in a Building Site shall be a member of the Association with voting rights as provided in these Protective Covenants.

34. Association Voting. On matters of Association business which the Association's board of directors determines shall be, or applicable law requires to be, submitted to and voted upon by the members of the Association, each Building Site shall be entitled to the number of votes equal to the result of dividing the gross area of the applicable Building Site by 10,000 and rounding such result to the nearest whole number. When a Building Site is owned by more than one person or entity, such owners shall determine among themselves how the vote(s) for such Building Site shall be cast, but in no event shall the number of votes cast for any Building Site exceed the number of votes attributable to such Building Site as determined in accordance herewith. In the event such owners fail to do so, and more than one owner attempts to cast a

vote on a matter properly before the members of the Association, the vote applicable to the Building Site shall be apportioned pro-rata among those owners who actually cast a vote on any matter properly before the members of the Association. The Developer shall be entitled to the number of votes equal to the result of dividing the gross area of that portion of the Protected Tract owned by the Developer by 10,000 and rounding such result to the nearest whole number. Members of the Association may vote by duly authorized proxy. If the Assessments on any portion of the Protected Tract are delinquent at the time a vote of the members of the Association is taken, the votes attributable to such portion of the Protected Tract shall not be counted. All votes attributable to a any portion of a Building Site which is encumbered by an unpaid purchase money debt to the Developer shall be cast by the Developer and not by the owner(s) of such Building Site. Written notice of the purpose, time, and place of any meeting of the members of the Association shall be given to all such members entitled to vote at such meeting not less than ten (10) days or more than sixty (60) days in advance of such meeting. Members of the Association who are not entitled to vote at such meeting or who are not otherwise in good standing in the Association are not entitled to receive notice of or to be present at such meeting. At any meeting of the members of the Association, the presence of members and /or their proxies entitled to cast at least sixty percent (60%) of all the votes entitled to be cast at such meeting shall constitute quorum. If the required quorum is not present, another meeting may be called subject to the aforesaid notice requirement, but the required quorum for such subsequent meeting shall be one-half (½) of the quorum required at the preceding meeting; provided, however such subsequent meeting must be held within sixty (60) days following the preceding meeting.

35. Assignment of Member Voting Rights. Any member of the Association may collaterally assign, as additional security, its voting rights to the beneficiary of a first lien deed of trust or first mortgage covering all or any portion of the Protected Tract owned by the member. Any such assignment, however, shall not be effective until written notice thereof is actually received by the Association together with evidence of said beneficiary's entitlement to cast said votes.

36. Board of Directors. The affairs of the Association shall be managed by a board of directors which will be established and which shall conduct regular and special meetings according to these Protective Covenants and the provisions of the Bylaws of the Association. All actions required or permitted by the Association under these Protective Covenants shall be exercised by the board of directors unless these Protective Covenants, or the Association's organizational documents, specifically require that an action be taken by the Association members.

37. Duty of the Association. In addition to the powers and authority granted to it by its Articles of Incorporation, the Bylaws, or these Protective Covenants, and without limiting the generality thereof, the Association shall have the duty to designate, operate, maintain, or otherwise manage or provide for the designation, operation, maintenance, repair or management of the Common Properties, and areas adjacent to the Common Properties such as public right of way and medians located in public right of way. Such responsibilities shall include, but not be limited to, trash pick-up, mowing, pruning, fertilizing, preservation and replacement of the landscaping and the upkeep and maintenance of lakes or other water features, gates, buildings, sprinklers, irrigation mains and laterals, sprinkler heads, equipment, water pumps, signs, lighting, planting boxes, and other landscape amenities and improvements.

38. Powers and Authority of the Association. The Association shall have all of the powers of a non profit corporation organized under the Non-Profit Corporation Act of the State

of Texas, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, the Bylaws, or these Protective Covenants. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under these Protective Covenants, the Articles of Incorporation and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation the following powers:

- (a) To levy on and collect Assessments from the owners and to enforce payment of such Assessments all in accordance with these Protective Covenants, the Bylaws of the Association, and any rules or regulations duly promulgated hereunder;
- (b) To enter into contracts with owners of Building Sites to provide landscape maintenance services and security services to such owners;
- (c) To make reasonable rules and regulations for the operation, maintenance, repair, or management of the Common Properties as specified herein and to amend them from time to time, provided that any rule or regulation adopted by the board of directors may be amended or repealed by a Majority Vote of the Members;
- (d) To enter into agreements or contracts with insurance companies with respect to insurance coverage for the benefit of the Association;
- (e) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters;
- (f) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent owners or other property or rights of the Association; provided, however, that any such loan from the Developer to the Association shall bear interest at a rate substantially similar to the interest rate that would be charged by an institutional lender in the area;
- (g) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (h) To sue or defend in any court, administrative agency or other tribunal on behalf of the Association and its members;
- (i) To provide adequate reserves for repairs and replacements;
- (j) To furnish to each owner within one-hundred twenty (120) days after the end of each fiscal year an annual report;
- (k) Adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property, and, if proceeds are insufficient to repair damaged or replace lost property, to assess the members in proportionate amounts to cover the deficiency;
- (l) To reinstate the voting rights of a member for any period during which any Assessment against such member's Building Site remains unpaid or such member is otherwise not a Member in Good Standing, for good cause shown;

- (m) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors, or such other employees as it may deem necessary, and to prescribe their duties and to set their compensation;
- (n) To retain the services of legal, accounting, architectural, and engineering firms;
- (o) To enforce the provisions of these Protective Covenants and any rules made hereunder and to enjoin and/or seek damages from any owner for violation of such provisions or rules;
- (p) To accept conveyance of and to own, lease, operate, and dedicate to the public or the Association the Common Properties; and
- (q) To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder, for the operation of the Association or for the enforcement of these Protective Covenants and the covenants, restrictions and development standards contained herein.

39. Liability Limitations. Neither any member, nor the directors, nor the officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another member, whether or not such other member was acting on behalf of the Association or otherwise. Neither the Developer, the Association, nor its directors, officers, agents or employees, shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Developer, the Association or any other person, firm or association responsible for undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

40. Affiliated Contracts. The Association shall have the full power and authority to contract with any owner, including, without limitation, Developer or Managing Partner, for performance of services which the Association is obligated or authorized to obtain, such contracts to be at competitive rates then prevailing for such services and upon such other terms and conditions, and for such consideration as the Association may deem advisable and in the best interest of the Association provided that the level of service received is consistent with that available from third parties.

41. Merger or Consolidation. The Association may, by Supermajority Vote, approve a plan of merger or consolidation with another association or entity. Upon a merger or consolidation of the Association with another association or entity, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be transferred to the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, restrictions and development standards established by these Protective Covenants within the Protected Tract 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, restrictions and development standards established by these Protective Covenants pertaining to the Protected Tract.

42. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering the Association, the ACC, and any or all portions of the Common Properties, and any improvements thereon or appurtenant thereto, and any other property owned or leased by the Association, for the benefit of the Association, the ACC, and the members, directors, officers, agents and employees of the Association, in such amounts and with such endorsements and coverage as shall be considered in its sole discretion to be good, sound insurance coverage for activities or properties similar in location, character, construction or use. Such insurance may include, but need not be limited to:

(a) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the owners and members with respect to the Common Properties; and

(b) Fidelity bond for all directors, officers and employees of the Association having control over the receipt or disbursement of funds.

43. Insurance Proceeds. The Association shall use recovered net proceeds of insurance policies to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the recovered net proceeds of insurance paid to the Association remaining in the possession of the Association after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for operation, maintenance, repair and replacement of the Common Properties.

44. Insufficient Proceeds. If the insurance proceeds for any repair or replacement of Association property is insufficient, or if the damage is not insured, the Association may levy a Special Assessment, as provided in these Protective Covenants, to cover the deficiency.

45. Creation of the Lien and Obligation of Assessments. Developer, for the Protected Tract, hereby covenants and agrees, and each owner of any Building Site, 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 and agree (and such covenant shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Building Site), to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies): (i) Base Assessments; (ii) Special Assessments; and (iii) Specific Assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge and a continuing lien upon that portion of the Protected Tract against which each such Assessment is made and shall also be the continuing obligation of the then-existing owner of such portion of the Protected Tract at the time when the Assessment became due.

46. Purpose of Assessments. All Assessments levied by the Association shall be used for the purpose of promoting the enjoyment and welfare of the owners and for the proper maintenance, repair and replacement of the Common Properties, including, but not limited to: (i) maintenance (and replacement as necessary) of the Common Facilities and Common Open Areas; (ii) the payment of premiums for hazard insurance in connection with the Common Properties and any improvements or facilities thereon to be replaced by the Association, public liability insurance, or other insurance purchased by the Association; (iii) paying the cost of labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Common Properties; (iv) paying the costs and fees of a manager or firm retained to manage the affairs and carry out the duties of the Association; (v)

carrying out the duties of the board of directors of the Association; and (vi) carrying out the purposes of the Association as stated herein or as may hereafter be stated in the Association's bylaws.

47. Annual Budget: Basis and Amount of Base Assessment.

(a) It shall be the duty of the board of directors to prepare on an annual basis a budget (the "Association Budget"), including a capital component, if necessary, establishing a capital reserve fund, covering the Common Expenses during the coming fiscal year.

(b) The Association Budget shall be the basis for determination by the board of the annual Base Assessment of owners hereunder. The annual Base Assessment to be levied against the Protected Tract for the fiscal year covered by the Association Budget shall be based upon assessment rates reasonably expected to produce total revenues to the Association equal to the Common Expenses. The annual Base Assessment therefor shall be calculated in accordance with the following:

(i) Each Building Site owner shall be assessed a pro-rata portion of the projected Common Expenses computed by multiplying the projected Common Expenses by the Applicable Percentage. As used herein, the Applicable Percentage is equal to the result of dividing the gross area of a Building Site by the gross area of the Protected Tract (less the Common Properties).

(ii) The Developer shall be assessed a pro-rata portion of the projected Common Expenses computed by multiplying the projected Common Expenses by the Developer Percentage. As used herein, the Developer Percentage is equal to the result of dividing the gross area of the Protected Tract (less any Building Sites conveyed by the Developer to third parties and the Common Properties) by the gross area of the Protected Tract (less the Common Properties).

48. Developer Subsidies. So long as the Developer owns any portion of the Protected Tract, the Developer may elect, but shall not be obligated, to reduce Base Assessments for any fiscal year by payment of a subsidy, which may be either a contribution or advance against future Base Assessments due from Developer, or a loan, in the Developer's discretion; provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Association's budget. The payment of such subsidy in any year shall under no circumstances obligate the Developer to continue payment of such subsidy in future years. Any subsidy treated as a loan by the Developer shall bear interest at a rate substantially similar to rates charged by institutional lenders in the area.

49. Implementation of Base Assessments. The proposed Association Budget and the annual Base Assessments based on such budget shall be submitted to the Members not less than thirty (30) days after the beginning of the budget year and shall become effective unless disapproved by Majority Vote of the Members. There shall be no obligation to call a meeting for the purposes of considering a budget except on petition of the members as provided for special meetings in the Bylaws of the Association. Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the board of directors fails for any reason to determine the Association Budget for the succeeding year, then and until such time as an

Association Budget shall have been determined as provided herein, the Association Budget in effect for the then current year shall continue for the succeeding year.

50. Maximum Assessment Rates. The rate applied by the Association for Annual Base Assessments for the first twelve (12) month period following the date the Association is formed shall not exceed \$0.02 per square foot of land affected by the Base Assessment. Annually thereafter, the maximum Base Assessment shall be set by the Association in the same manner and with the same notice as is hereinabove provided for establishing the Base Assessment for a particular year. Subject to the provisions of the following sentence, the maximum Base Assessment for any calendar year shall not exceed 115% of the maximum Base Assessment in effect for the preceding calendar year. After 51% of the gross area of the Protected Tract has been conveyed as Building Sites, the above stated percentage limit on the annual increase in the maximum Base Assessment may be raised upon approval by a Majority Vote of the Members.

51. Commencement Date of Base Assessments. The Association shall uniformly impose the Base Assessment on all the land now or hereafter subject to these Protective Covenants. The Base Assessment shall commence to accrue as to a particular Building Site on the day following the date the Developer delivers the initial deed to such Building Site. Reasonable portions of the Protected Tract owned by the Developer, as determined by the Association, shall be subject to the Base Assessment after the same have been improved by a paved street constructed along a boundary thereof. If the Base Assessment commences to accrue on a date other than January 1, the owner of an affected Building Site and/or the developer shall pay that part of the Base Assessment equal to a fraction, the numerator of which is the number of days between the date the Base Assessment commenced to accrue on such land and the next succeeding January 1st and the denominator of which is 365. All past due payments of the Base Assessment shall bear interest from their due date until paid at the maximum lawful rate.

52. Special Assessments. In addition to Base Assessments, the Association may, by a vote of the Association members, levy at any time a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction (other than the initial construction of the original improvements) or reconstruction, unexpected repair or replacement of a described improvement, including the necessary fixtures and personal property related thereto, or for carrying out the purposes of the Association as stated in its Articles of Incorporation or as stated herein. Any Special Assessment must be approved by a Majority Vote. Written notice of the meeting at which such vote is proposed shall be given to all members at least ten (10) days in advance and shall set forth the purpose of the meeting. Once approved, Special Assessments shall be calculated and assessed in the same manner as provided for Base Assessments in Section 47(b)(i) and (ii) above.

53. Due Date of Base and Special Assessments. Any Base Assessment shall be due and payable annually, on the date established by the board in connection with authorizing such Base Assessment, and shall be considered delinquent if not paid within thirty (30) days of such date. The due date and delinquent date of any Special Assessment shall be fixed in the resolution authorizing such assessment, but the delinquency date shall in no event be sooner than forty five (45) days after the date of the Association's notice of the assessment.

54. Specific Assessments. In addition to Base and Special Assessments, the board may levy a Specific Assessment against the owner of any Building Site if: (i) necessary to reimburse the Association for costs incurred in bringing the Building Site into compliance with

the provisions of these Protective Covenants or other applicable approved standards; (ii) the conduct of such owner, his licensee, lessee, invitee or guest was in violation of the provisions of these Protective Covenants or other applicable approved standards, and such violation resulted in a monetary fine being imposed against such owner, in which case the fine shall constitute the Specific Assessment; or (iii) the conduct of such owner, his licensee, lessee, invitee or guest resulted in damage to any portion of the Common Properties, in which case the costs incurred in repairing such damage and any applicable insurance deductible shall constitute the Specific Assessment. Such Specific Assessment may be levied upon the vote of the board of directors and after notice of the violation to the owner and an opportunity to cure, not to exceed thirty (30) days after the owner is notified of the violation in question. Any Specific Assessment shall be due and payable on the date established by the board in connection with authorizing such Specific Assessment, and shall be considered delinquent if not paid within thirty (30) days of such date.

55. Payment Certificates. The Association shall, upon request by an owner, and payment of a reasonable charge established by the Association, cause to be furnished to any such owner liable for Assessments, a certificate in writing signed by an officer of the Association setting forth whether the Assessments have been paid. Such certificate shall be conclusive evidence of the payment for any Assessments therein stated to have been paid.

56. Owner's Personal Obligation for Payment of Assessments. Assessments shall be the personal and individual debt of the owner covered by such Assessments. No owner may exempt itself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner shall be obligated to pay interest at an annual interest rate equal to the highest rate allowed by law on the amount of the Assessment from the due date thereof, together with all costs and expenses of collection, including reasonable attorney's fees.

57. Assessment Lien and Foreclosure. The Protected Tract is hereby subject to, and the Developer hereby reserves for the benefit of the Association, a perfected contractual lien for unpaid assessments owed on account of ownership of any portion of the Protected Tract, as well as interest, late charges and collection costs (including reasonable attorney's fees). Such lien shall be prior and superior to all other liens except liens for (i) taxes, bonds, assessments and other levies which by law would be superior thereto, (ii) the lien or charge of any first lien deed of trust of record (meaning any recorded deed of trust with first priority over other deeds of trust, if any) made in good faith and for value to acquire the property, and any lien given for the purpose of advancing funds to make repairs or for construction of improvements on a Building Site. The lien shall be self-operative, shall arise by virtue of the recordation of these Protective Covenants, which constitutes record notice and perfection of the lien, and shall continue thereafter in inchoate form without any deed of trust, mortgage or other document being executed or granted, without such lien being reserved in or referenced to in any deed or other conveyance document, and without any other action being taken by any party.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any tract the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002, as it may be amended from time to time (the "Foreclosure Statute"), in like manner of any deed of trust on real property. In connection with the lien created herein, each

owner grants the Association, whether expressed in the deed or other conveyance to the owner, a power of sale to be exercised in accordance with the Foreclosure Statute. Without limiting the foregoing, Developer hereby grants, sells and conveys to Charles D. Mueller, as Trustee, the Protected Tract, in TRUST, upon the terms and conditions herein set forth, and for such purpose these Protective Covenants shall constitute a deed of trust under the laws of the State of Texas. At the option of the Developer, so long as Developer shall own any portion of the Protected Tract, and thereafter at the option of the Association, with or without any reason, a successor or substitute Trustee may be appointed, who shall thereupon become vested with and succeed to all the powers and duties given to the Trustee herein. Such right to appoint a successor or substitute Trustee shall exist as often and whenever deemed necessary by the appointing authority. At any foreclosure proceeding, any person, including but not limited to the Association and any owner, shall have the right to bid for the tract offered for sale at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which a tract is owned by the Association following foreclosure, no Assessments shall be levied on it. Suit to recover a money judgment for unpaid Assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any portion of the Protected Tract shall not affect the assessment lien or relieve the Protected Tract, or any portion thereof, from the lien for any Assessments thereafter becoming due. However, the sale or transfer of any tract pursuant to judicial or non judicial foreclosure of a first lien deed of trust shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Where the beneficiary of a first lien deed of trust obtains title pursuant to judicial or non judicial foreclosure, neither it nor its successors and assigns shall be liable for the Assessments chargeable to such tract which became due prior to the acquisition of title to such tract by such acquirer. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible as a Common Expense from the remaining members of the Association (including such acquirer, its successors and assigns).

58. Areas Exempt. All portions of the Protected Tract owned by or otherwise dedicated to any governmental authority (other than Building Sites), the Common Properties, and all property owned by the Association, shall be exempt from Assessments and the lien created herein.

59. Initial Construction Period; Repurchase Option. Unless otherwise specified in the initial deed conveying any Building Site, construction of a building and related improvements approved by the ACC shall be commenced on such Building Site within twelve (12) months from the date of such conveyance and diligently thereafter proceed to final completion (i.e., ready for tenant improvements or occupancy) within eighteen (18) additional months plus any period of Excusable Delay. In the event of any breach of the foregoing construction covenant, then at any time following such breach and notwithstanding the fact that the owner of the affected Building Site may be attempting to cure such breach, the owner of such Building Site will, upon the request of the Developer, its successors or assigns, upon tender by the Developer to the owner of such Building site of the price initially paid by such owner to the Developer for such Building Site (less any remaining purchase money indebtedness assumed by the Developer), reconvey such Building Site to the Developer, its successors or assigns, by special warranty deed free and clear of all liens and encumbrances other than those to which the original conveyance of such Building Site was subject or purchase money indebtedness assumed by Developer. Such right of the Developer to require reconveyance of a Building Site following a breach of the foregoing construction covenant shall be exercised, if at all, by the Developer on or before thirty-six (36) months from the date of such conveyance plus any period of Excusable Delay, at which

time failing exercise thereof, such option shall terminate and be of no further force or effect. If the owner of a Building Site executes a first lien deed of trust or mortgage to secure a loan made to construct buildings and improvements on such Building Site and informs the Developer in writing of the name and address of the holder of such first lien deed of trust or mortgage, the Developer will give written notice of any default under this Section to such mortgage holder at the address furnished, and such mortgage holder shall thereupon have a reasonable period of time (not to exceed 120 days) following the date of such notice within which to foreclose its lien on such Building Site and thereafter shall diligently proceed to either: complete the improvements and comply with the provisions of this Section as to which a breach has occurred; or remove any incomplete improvements from the Building Site; and to otherwise comply with all of these Protective Covenants. While such mortgage holder is attempting in good faith to accomplish within the time period allowed it hereunder the foregoing, the Developer shall not exercise its right to require a reconveyance of the Building Site. If the mortgage holder, following foreclosure, elects to remove any incomplete improvements from the Building Site, the mortgage holder shall commence construction of improvements on the Building Site within twelve (12) months from the date of the removal of such incomplete improvements and diligently thereafter proceed to final completion (i.e., ready for tenant improvements or occupancy) within eighteen (18) additional months plus any period of Excusable Delay.

60. Effect. These Protective Covenants shall be binding upon the Developer, its successors and assigns and all parties claiming by, through and under it or them and all subsequent owners of any interest in lands subjected hereto, each of whom shall be bound by these Protective Covenants; provided, however, no such person or corporation or owner shall be liable except in respect of breaches of these Protective Covenants committed during its, his or their ownership of such property.

61. Enforcement. Enforcement of these Protective Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any covenant, either to restrain or prevent such violation or proposed violation by any injunction, either prohibitive or mandatory, to obtain any other relief authorized by law. Such enforcement may be by the owner of any interest in any land affected hereby, the Developer, the Association or any one or more of them. The legal fees incurred by the party enforcing these Protective Covenants or in the collection of the Assessments or any other sums to be paid pursuant to these Protective Covenants shall be paid by the person or entity against whom enforcement is sought should the enforcing party prevail in such action.

62. Validity. The invalidity or unenforceability of one or more of these Protective Covenants or any part or parts of any Protective Covenants in any instance or as applied to any particular situation shall in no way affect or invalidate the other Protective Covenants or parts thereof or the application thereof to other circumstances, but, to the contrary, all Protective Covenants shall remain in full force and effect during the term herein specified and any extension thereof to the full extent and to all circumstances which may be legally enforceable.

63. Term. These Protective Covenants shall bind the Protected Tract for a term of years ending at 11:59 p.m. on December 31, 2031, after which date these Protective Covenants shall be automatically extended for successive periods of ten (10) years each.

64. Amendment. The Developer may unilaterally amend these Protective Covenants at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial

determination which is in conflict therewith, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Protected Tract, or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the properties within the Protected Tract. Further, so long as it still owns any portion of the Protected Tract for development, the Developer may unilaterally amend for other purposes, provided the amendment has no material adverse effect upon any right of any Building Site.

Except as otherwise specifically provided above with regard to the Developer, these Protective Covenants may be amended only by Supermajority Vote of the members of the Association. No amendment by the Association, however, may remove, revoke or modify any right or privilege of Developer without the consent of Developer (or its assignee of such right or privilege).

These Protective Covenants may be canceled at any time by a written agreement signed and acknowledged by the then owners of all the land area within Protected Tract, which agreement shall be filed in the Official Records of Hidalgo County, Texas. Amendments to these Protective Covenants shall become effective upon recordation in the Official Records of Hidalgo County, Texas, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate as a waiver or amendment of any provision of these Protective Covenants. The joinder of mortgagees or lessees of any property in the Protected Tract is not necessary to alter, amend or extend these Protective Covenants. All mortgagees and lessees, by taking a lien on any portion of the Protected Tract (as to mortgagees), and going into possession of such tract (as to lessees), shall be deemed to have consented to the alteration, amendment or extension of these Protective Covenants as herein provided, and their respective rights are, and shall be, in all respects, subordinate and subject to the rights of the Association members and Developer to alter, amend, terminate or extend these Protective Covenants.

65. Effect of Amendment of Protective Covenants. No amendment of these Protective Covenants which would affect any existing use, condition or operation on any Building Site for which the ACC has previously approved plans and specifications shall be effective with respect to such Building Site unless the owners of such Building Site approve of such amendment, in writing, or shall have cast an affirmative vote for such amendment at a meeting of the Association held after proper notice.

66. Primacy of Liens. Any violation of these Protective Covenants shall not affect the validity or enforceability of any bona fide lien or deed of trust of record upon any Building Site or any part thereof, which lien or deed of trust may be enforced in due course, subject to the covenants, restrictions, and development standards contained in these Protective Covenants.

67. Notices. Any notice sent to any owner of a Building Site pursuant to these Protective Covenants shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears on the records of the Association as owner of the applicable Building Site at the date of such mailing.

68. Variances. The ACC may, but shall not be required to, authorize variances from compliance with any of the provisions of these Protective Covenants and/or the development

standards when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, as determined in the sole discretion of the ACC. Such variances may only be granted when unique circumstances exist and no variance shall (i) be effective unless in writing, (ii) be contrary to any material restrictions set forth in the body of these Protective Covenants, or (iii) estop the ACC from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental authority, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

69. Additions. The Developer may from time to time, at the Developer's sole discretion, add or annex additional land to the Protected Tract and thereby subject such additional land to these Protective Covenants as if such additional land had been a part of the Protected Tract on the date hereof. Such addition or annexation shall be accomplished by the execution by the Developer and filing in the Official Records of Hidalgo County, Texas, of an instrument setting forth the land to be added or annexed and subjecting the same to the Protective Covenants.

70. Developer's Rights. Developer shall have the rights set forth in these Protective Covenants with respect to Developer so long as Developer owns any portion of the Protected Tract.

71. Assignment and Delegation of Duties. Developer shall have the right to assign and/or delegate its rights, privileges, duties and obligations under these Protective Covenants.

72. Conflicts with Deeds of Conveyance. If any part of these Protective Covenants shall be in conflict with any covenant, condition or restriction in a prior recorded deed of conveyance to any portion of the Protected Tract, the covenants, conditions or restrictions within such prior deed of conveyance shall govern, but only to the extent of such conflict.

73. Titles. The titles, headings and captions which haven been used throughout these Protective Covenants are for convenience only and are not to be used in construing these Protective Covenants or any part thereof.

74. Number and Gender of Words. Whenever used in these Protective Covenants, the singular number shall include the plural where appropriate and vice versa; and words of any gender shall include each other gender, where appropriate.

75. Consents/Approvals. Whenever these Protective Covenants require the consent or approval of the ACC or Developer, such consent or approval must be obtained prior to the requested action, and such consent or approval, to be effective, must be in writing.

76. Cumulative Effect: Conflict. The covenants, restrictions and development standards of these Protective Covenants shall be cumulative with those of any supplemental instrument that does not expressly modify or supersede these Protective Covenants. In the event of conflict between or among any term of these Protective Covenants, on the one hand, and any term of a supplemental instrument, the latter term shall control.

77. Use of Words. No owner or occupant of a Building Site shall use or authorize the use of the words "Commerce", "495", "Partners", "Business" or "Park", or any derivative thereof in the name of any building or any business or enterprise or in any printed or promotional material without the consent of the Developer.

EXECUTED effective as of April 19th, 2001.

495 COMMERCE CENTER PARTNERS, LTD., a Texas limited partnership

By: Synergis, L.L.C., a Texas limited liability Company, its General Managing Partner

By: _____
Charles D. Mueller, President

By: Mayfair Properties, L.L.C., a Texas limited liability company, its General Partner

By: _____
James W. Collins, President

Amended and Restated Protective Covenants and Retained Easements agreed to and accepted by all current owners of Building Sites as signified by their execution below:

Cowperwood McAllen I, LP, a Texas limited partnership

By: Cowperwood McAllen, Inc., a Texas corporation, General Partner

By: _____
Its: _____

Synergis, L.L.C., General Partner

By: _____
Charles D. Mueller, President

Inter National Bank

By: _____

Carlos I. Garza, President and CEO

**Joseph Ramon, III and Leticia A. Ramon,
Family Limited Partnership,
a Texas limited partnership**

By: _____
Joseph Ramon, III, Partner

By: _____
Leticia A. Ramon, Partner

**IPH Property Management, L.P.
A Texas limited partnership**

By: _____
Pablo Huerta

**Riofair Partners, Ltd.
a Texas limited partnership**

By: Mayfair Properties, LLC, General Partner

By: _____
James W. Collins, President

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by _____, _____ of Cowperwood McAllen I, LP, a Texas corporation, on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by Charles D. Mueller, President of Synergis, LLC, a Texas limited liability company, general managing partner of 495 Commerce Center Partners, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by Carlos I. Garza, President of Inter National Bank, on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by Joseph Ramon III, Partner of Joseph Ramon, III and Leticia A. Ramon, Family Limited Partnership, on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by Leticia A. Ramon, Partner of Joseph Ramon, III and Leticia A. Ramon, Family Limited Partnership, on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by Pablo Huerta, President of IPH Property Management, L.P., on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on _____, 2004, by James W. Collins, President of Mayfair Properties, LLC, a Texas limited liability company, general partner of 495 Commerce Center Partners, Ltd., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

495 Commerce Center Partners, Ltd.
Attn: Mr. Charles D. Mueller
1400 N. McColl Rd., Suite 201
McAllen, TX 78501

Exhibit "A"
Legal Description of
495 Commerce Center