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03/25/2015

CITY OF GLENDALE, ARIZONA

**DECLARATION OF
RESTRICTIVE COVENANTS**

(95th Avenue and Glendale)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)

WHEN RECORDED, RETURN TO:

City of Glendale
Attn: City Clerk
5850 W. Glendale Avenue
Glendale, Arizona 85301

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
ELECTRONIC RECORDING
20150200253,03/25/2015 03:33,
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DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "**Declaration**") is made as of this 25 day of March, 2015, by the City of Glendale, a political subdivision of the State of Arizona (the "**City**").

RECITALS

A. The City holds fee simple title to that certain real property more particularly described on Exhibit "A" attached hereto (the "**Property**").

B. The City desires to record this Declaration imposing certain restrictions upon the Property, as more fully set forth below.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby declares as follows:

1. Incorporation of Recitals. Each of the foregoing Recitals set forth above is hereby affirmed as true and correct and is incorporated into this Declaration by this reference and is made a part hereof.

2. Defined Terms. Each capitalized term used herein shall have the meaning assigned to such term when first used herein.

3. Restrictive Covenants. Upon recordation of this Declaration in the Official Records of Maricopa County, Arizona, the City covenants and agrees, for itself and for all future owners of all or any portion of the Property, that for so long as this Declaration shall remain in full force and effect, in the event that any part of the Property is developed in any manner, the following restrictions shall apply to the development, use and enjoyment of the Property. Notwithstanding the foregoing to the contrary, in no event shall this Declaration be deemed to create an obligation on the part of the City or any future owner of all or any portion of the Property to develop the Property.

(a) Use Restrictions. Without the prior written consent of the City, the Property shall not be used for any of the following purposes:

(i) Warehouse-style, "big-box" retail store with a single occupant occupying 50,000 square feet of gross floor area or more (such as Home Depot, Lowe's, Target, Sam's Club, Wal-Mart, or Costco).

(ii) Above-grade parking structures, except to the extent used solely by the occupants of the Property, and their invitees, customers, clients, and employees.

(iii) Hardware stores of any type or size (such as Ace Hardware, True Value Hardware, Home Depot or Lowe's); provided, however, that the foregoing prohibition shall not apply to retail stores selling home or kitchen décor items or craft items as their primary business (such as Restoration Hardware, Pottery Barn, Michael's, Crate & Barrel, or Bed, Bath & Beyond).

(iv) Any use that includes dancing or live musical performances with more than one performer as a primary component of its business (such as House of Blues or Toby Keith's).

(v) Auto service facilities, including, without limitation, auto repair shops, auto body shops, auto detailing shops, and gas stations, but not including retail auto parts stores (such as Auto Zone, Advance Auto Parts, or O'Reilly Auto Parts).

(b) Site Development Restrictions. Without the prior written consent of the City, development of the Property shall adhere to the following site development restrictions:

(i) No vertical improvements (except for retaining walls, boundary walls, fences, signage and landscaping) shall be constructed within twenty-five feet (25') of the northern boundary of the Property, or within ten feet (10') of the edge of pavement of any roadway on or adjacent to the Property.

(ii) The height of vertical improvements on the Property shall not exceed ninety feet (90') from the finished floor elevation of the surface level parking areas on the Property (if any), or if no surface level parking areas exist on the Property, the finished floor elevation of the paved surface located nearest the vertical improvement. The overall height of an improvement shall be measured from the highest point on the parapet or roof ridge to the applicable finished floor elevation.

(iii) The maximum floor area ratio, calculated by dividing the gross square footage floor area of all buildings constructed on the Property by the gross square footage of the Property, shall not exceed 1.0. For purposes of determining floor area ratio, the floor area of a building shall be the sum of the gross floor area of each story of the building, measured from the exterior surface of the exterior walls, but excluding stairways and stairwells, elevators, elevator equipment rooms and elevator shafts, parking areas and parking structures, loading docks open or covered by a roof or canopy, but otherwise unenclosed and used exclusively for loading and unloading, unenclosed decks, balconies, porches, and platforms not used for commercial or restaurant activity, covered and uncovered courtyards, arcades, atria, paseos, walkways, and corridors located at or near the street level that are accessible to the general public provided they are not used as sales, display, storage, service, or production areas, mechanical equipment rooms, electrical rooms, telephone rooms, and similar space.

4. Effective Date. This Declaration shall become effective, binding, valid, and enforceable upon the date that it is recorded in the Official Records of Maricopa County, Arizona (the "*Effective Date*").

5. Term. The term of this Declaration shall commence upon the Effective Date and shall be perpetual.

6. Amendment, Termination. No modification, amendment, termination or cancellation of this Declaration shall be effective unless it is in writing, recorded in the Official Records of Maricopa County, Arizona and signed by the then-current owner(s) of the Property and by an authorized representative of the City.

7. Governing Law. This Declaration shall be governed by and interpreted, construed and enforced pursuant to the provisions of the laws of the State of Arizona, without giving any effect to the principles of the conflicts of law. Any action brought to interpret, construe, or enforce any provision of this Declaration shall be maintained exclusively in the Superior Court for Maricopa County, Arizona.

8. Exhibits. Each of the Exhibits attached to this Declaration is hereby incorporated into this Declaration by reference and is made a part hereof.

9. Binding Effect; Covenants to Run with the Land. All provisions of this Declaration touch and concern and shall run with the land comprising the Property and shall be binding upon and inure to the benefit of the assigns, successors and personal representatives of the City and all future owners of all or any portion of the Property. This Declaration shall be enforceable solely by the City, and in no event shall any other person be entitled to enforce this Declaration.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Exhibit "A"

That certain real property located in the City of Glendale, County of Maricopa, State of Arizona, located south of Glendale Avenue, east of 95th Avenue, west of 93rd Avenue, and north of Maryland Avenue, more particularly described as follows:

LOT 4, OF FINAL PLAT FOR WESTGATE, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 745 OF MAPS, PAGE 14.