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After Recording, Please Return to:

Payne Property Enterprises, LLC
Attention: Rodney G. Payne
1896 West Portabello Road
South Jordan, Utah 84095

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04/13/2012 10:03 AM \$72.00
Book - 10008 Pg - 2040-2069
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
PAYNE PROPERTY ENTERPRISES
1896 WEST PORTABELLO RD
SOUTH JORDAN UT 84095
BY: DCD, DEPUTY - WI 30 P.

AMENDED & RESTATED
DECLARATION OF CONDOMINIUM
OF
PAYNE PROFESSIONAL PLAZA

**Amended & Restated
Declaration of Condominium
(Including Bylaws)**

OF

**PAYNE PROFESSIONAL PLAZA
(A Professional Condominium Project located in South Jordan, Utah)**

This Amended & Restated Declaration of Condominium, including Covenants, Conditions and Restrictions of the Payne Professional Plaza (this "Declaration") is made as of this ____ day of April, 2012, by Payne Property Enterprises, LLC ("Declarant"), pursuant to the provisions of Utah Code Sections 57-8-1 et seq., as amended. This Declaration supersedes and replaces in its entirety that certain Declaration of Condominium for the Payne Professional Plaza, a Professional Condominium Projection dated November 11, 2011 and recorded in the office of the Salt Lake County Recorder on November 16, 2011 in Book 9967 at Pages 3008-3035, as Entry No.: 11280941.

RECITALS:

- A. Declarant is the record owner of that certain tract of land more particularly described in article II hereof, together with improvements thereon.
- B. Declarant is in the process of constructing upon the Tract certain improvements so as to enable its use and operation as a condominium Project. The construction of all such improvements shall be preformed in accordance with the information contained in this declaration and the Condominium Plat.
- C. Declarant desires, by recording this declaration, to submit said Tract and all improvements constructed thereon to the provisions of the Act as a Condominium Project to be known as PAYNE PROFESSIONAL PLAZA.
- D. Declarant intends that free title to individual Units contained in the Project, which title vests in each owner in fee simple, together with title to the Common Areas and Facilities appurtenant to such Units be subject to the covenants, conditions, restrictions, limitations, and easements herein set forth. Ownership of the Common Areas and Facilities appurtenant to the Units shall be in the Association in fee simple.
- E. This Declaration shall apply to all persons or entities which shall hereafter acquire any interest in the real property appurtenant to this declaration.

NOW THEREFORE, for the foregoing purposes, Declarant hereby makes the following declaration:

**ARTICLE I
DEFINITIONS**

When used in this Declaration (including that portion hereof captioned "Recitals") each of the following terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the content hereof, have the meaning described by the Act.

- 1.01 **Act** shall mean and refer to the condominium Ownership Act, title 57, Chapter 8, Utah Code (2011), as the same may be amended from time to time, including any successor statutory provisions thereof.
- 1.02 **Association of Suite Owners or the Association** shall mean and refer to all of the Suite owners acting as a group in accordance with the declaration and bylaws, and shall be known as the "PAYNE PROFESSIONAL PLAZA Owners Association", as established in the article of Incorporation of PAYNE PROFESSIONAL PLAZA Owners Association
- 1.03 **Buildings** shall mean and refer to the structures described on the Plat containing the Suites comprising a part of the Project.
- 1.04 **Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles X, XI and XII, pursuant to Sections 57-8-15 of the Act.
- 1.05 **Common Areas or Common Areas and Facilities** shall mean, refer to and include:
- (a) The real property and interest in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and all lawns, landscaping, fences; outdoor lighting, sidewalks, walkways, parking lots, and private ways located thereon, utilities, and easements, but excluding all individual Suites;
 - (b) All common areas and facilities as above defined, which may be designated as such on the Condominium Plat, whether or not expressly listed herein or on the Plat;
 - (c) All foundations, columns, beams, interior load bearing wall, and supports of the Buildings;
 - (d) All walls, corridors, stairs, stairways, entrances, exits, and landings which are designed for the use of more than one Suite and which are not contained with a Suite;
 - (e) Those portions of the exterior walls of the buildings (excluding glass in windows) beyond the exposed face of the dry wall on the Suite side of such walls; those portions of all walls which enclose Suites and divide them from corridors, stairs, and other Common Areas and which are located between the Suites within the unfinished surfaces of such wall on either side thereof, the floors; and the roof;
 - (f) All installations and equipment designed and intended to provide utility services for common use, including (but not limited to) fire sprinkler system, door security system, fans, clocks, pumps, compressors and control apparatus and equipment, whether or not located within the horizontal and vertical boundaries of a Suite, but excluding from such apparatus or equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Suite and designed and intended for the sole use of such Suite;
 - (g) All apparatus and equipment designed and intended for common use such as (but not necessarily limited to) pumps, motors, fans, clocks, compressors and control apparatus and equipment, whether or not located within the horizontal and vertical boundaries of a Suite, but excluding from such apparatus or equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Suite and designed and intended for the sole use of such Suite;

- (h) All cleaning and maintenance equipment and other personal property at any time leased, acquired, owned or held by the association for the common use of benefit of all Owners; and
 - (i) All parts of the Project designed and intended for or normally in, common use of necessary or convenient to the existence, maintenance, safety, or management of the project;
 - (j) The term "common use", as used in his definition, includes without limitation, use by or for any two or more Suites.
- 1.06 **Common Expenses** shall mean and refer to all items and sums described in the Act which are lawfully assessed against the Suite Owner in accordance with the provisions of the Act, this Declaration and such rules, regulations and other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Association may from time to time adopt.
- 1.07 **Condominium Project or Project** shall mean and refer to PAYNE PROFESSIONAL PLAZA as the same shall exist from time to time.
- 1.08 **Condominium Suite or Suite** shall mean and refer to one of the individual professional-style Suites which are designed as a Suite on the Condominium Plat. Notwithstanding any information on the Condominium Plat to the contrary, each Suite is or shall be deemed to be bounded by the interior surfaces of the walls, floors and ceilings, and the exterior surfaces of all window glass and doors or along the perimeter boundaries of a Suite shall constitute part of the Common Areas and Facilities. A Suite shall also include any non-load bearing walls and partitions which are wholly confined within its vertical and horizontal perimeters; provided, however, that a Suite shall not include any part or portion of the Common Areas defined in paragraphs (c), (f), or (g) of section 1.05 hereof, but shall include all installations, equipment, apparatus, and items affixed or connected thereto of the character contemplated by said paragraphs (f) and (g) which are located within the exterior boundaries of such Suite. A Suite shall also include all fixtures confined within its vertical and horizontal perimeters and intended for the sole use of such Suite. The exterior surface of a window glass or door shall mean the plane at which such surface is located with the window or door is closed.
- 1.09 **Declaration** shall mean and refer to this declaration as the same may hereafter be amended in accordance with the law ad provisions hereof. Any ambiguities, omissions, and/or conflicts shall be construed to comply with the provisions of the Act.
- 1.10 **Expandable Condominium** means a condominium project to which additional land or an interest in it may be added.
- 1.11 **Limited Common Areas and Facilities or Limited Common Areas** shall mean and refer to those common areas, if any, designated in this declaration or the Act or shown on the Plat as reserved for the exclusive use of a certain Suite or Suites to which they provide service to the exclusion of other Suites.
- 1.12 **Management Committee or Committee** shall mean and refer to the Committee as provided in the declaration charged with and having the responsibility and authority to administer the Project and to make and to enforce reasonable rules and regulations covering the operation and maintenance thereof.
- 1.13 **Member** shall mean and refer to an owner as a member of the association.

- 1.14 **Mortgage** shall mean and include both a recorded first mortgage on one or more condominium Suites and a recorded first deed of trust on one or more Condominium Suites.
- 1.15 **Mortgagee** shall mean and include both a mortgagee and a beneficiary under a recorded Mortgage as defined in Section 1.14, above.
- 1.16 **Condominium Plat or Plats** shall mean and refer to the plats entitled PAYNE PROFESSIONAL PLAZA CONDOMINIUMS executed and acknowledged by Declarant, consisting of (1) sheet prepared by Dale K. Bennett (a duly registered Professional Land Surveyor holding Certificate No. 10338), as said Plat may hereafter be modified or amended in accordance with law and provisions hereof.
- 1.17 **Tract** shall mean and refer to the real property described in Exhibit "A" hereto.
- 1.18 **Suite Number** shall mean and refer to the number, letter or combination thereof which designates a Suite on the Plat.
- 1.19 **Suite Owner or Owner** shall mean and refer to the person or persons owning a fee simple interest in a Condominium Suite. In the even a Suite is the subject of an executory contrast of sale, the buyer shall, unless the seller and buyer have otherwise agreed and informed the committee in writing of such agreement, be considered the Suite Owner for all purposes.

ARTICLE II SUBMISSION OF THE PROJECT

- 2.01 **Submission, Description, and Reservations.** Declarant hereby submits the real property and improvements thereon with reservations, as is more particularly described in Exhibit "A", to be included in the Project, which is situated in the City of South Jordan, County of Utah, and the State of Utah. Declarant intends that the Condominium Ownership Act found at Utah Code Sections 57-8-1 et seq., as amended shall apply to such property.
- 2.02 **Division into Condominium Suites; Ownership Interest.** The Project shall contain four (4) professional Suites as set forth on the Plat.

ARTICLE III IMPROVEMENTS

- 3.01 **Improvements.** The improvements included in the project are now or will be located on the Tract and all of such improvements are described on the Plats and Construction Drawings contained in Exhibit "B" attached hereto.
- 3.02 **Description of Building and Suites.** There is one (1) professional building contained in the project, which are described in Exhibit "B" attached hereto. The Common Areas consist of driveways, parking areas, exterior stairways, sidewalks and landscaped area. The square footage of the Suites is as contained in Exhibit "C" attached hereto.
- 3.03 **Description and Legal Status of Suites.** Each Suite shall be legally designated and described by a Suite Number. Each Suite shall be assigned numbers: 1, 2, 3 and 4.
- 3.04 **Common and Limited Common Areas.** To the extent they exist, the Common Areas contained in the Project are described and identified in Article I hereof and on the Plats. While ownership of the Common Areas and Limited Common Areas is vested in the

Association, the Owners right to use and enjoy said Common Areas shall automatically accompany the conveyance of the Suite to which they relate.

- 3.05 **Conveyance and Description of a Suite.** Each conveyance or contract for the sale of a Suite and every other transaction affecting title to a Suite shall be done by reference to the Suite Number shown on the Plat with appropriate reference to the Plat and to this Declaration, as each shall appear on the records of the Salt Lake County Recorder, Utah, and in substantially the following form:

Suite [1, 2, 3, and 4] contained within PAYNE PROFESSIONAL PLAZA as the same is identified on the Condominium Plat therefore recorded in Salt Lake County, Utah as entry No. 11369660 and any amendments thereto.

Subject to all the rights and limitations of ownership as described therein.

The indicated blanks shall be designated with the entry numbers as contained on the appropriate recording stamp of the Plat and this Declaration. Such description will be constructed to describe the Suite, together with the right to use and enjoy the common areas and Facilities as the same are established and identified in the Declaration and on the Plat, and to incorporate all the rights incident to ownership of a Suite and all the limitations of such ownership as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this declaration.

ARTICLE IV NATURE AND INCIDENTS OF OWNERSHIP

- 4.01 Title to a Suite shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.
- 4.02 **No Separation.** No part of a Suite, nor a part of the legal rights comprising ownership of a Suite, may be separated from any other part thereof during the period of condominium ownership to each Suite, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Suite or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Suite, together with all appurtenant rights created by law or by this Declaration, or perform pursuant to its Declaration.
- 4.03 **Membership in Association.** Each Suite Owner shall be a member of the Association of Suite Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Suite to which it appertains.
- 4.04 **Ownership of Common Areas.** Each Suite Owner shall be entitled to an undivided interest in the Common Areas and Facilities in the percentages set forth in Exhibit "F".
- 4.05 **No Partition.** No Suite owner shall be allowed to bring a partition action with respect to the Common Areas or ownership thereof.
- 4.06 **Use of Common Areas and Limited Common Areas.** Subject to limitations contained in the declaration, each Suite Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy any limited common areas designated herein or on the Plat or inferred by the Act which appertains to the Suite.

- 4.07 **Duty of Owner to Pay Taxes on Suite Owned.** It is understood that under the Act, each Suite in the project is subject to separate assessment and taxation of each taxing authority and special district which has such jurisdiction over the Project for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the project as such. Accordingly, each Suite owner will pay and discharge any and all taxes and assessments which may be assessed against such owner relative to his condominium Suite.
- 4.08 **Duty to Pay Association Assessments.** Each Suite Owner is obligated to pay and discharge all assessments and charges levied by the association as set forth herein.
- 4.09 **Suite Maintenance.** Each owner shall at his own cost and expense, maintain, repair, paint, repaint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of walls, ceilings, floors, and windows and doors within such boundaries of his Suite and all walls, ceilings, and floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of this Suite in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing, heating unit, air conditioning Suite, lighting fixtures, or other appliances, apparatuses, or fixtures that may be in, or connected with his Suite.
- 4.10 **Maintenance of Common Areas.** The Association shall keep the Common Areas designed for use in connection with the Suites in a clean, sanitary, and attractive condition at all times. Specifically, the Association shall maintain, repair, mow, and remove snow from the associated landscape, grass, vegetation, sprinklers, parking lot, railing and fence within such boundaries associated with the Common Areas . In addition to keeping the Common Areas in good repair and in a clean and sanitary condition, the Association shall be responsible for the maintenance, repair or replacement of any lighting fixtures, or other appliances or fixtures that may be in, or connected with the Common Area. All of the costs and expenses associated with the maintenance, repairs, snow removal, mowing, etc. shall be deemed a common area maintenance expense and shall be charged to the Suite Owners, pro rata, in the CAM charges. Each respective Suite owner, shall be responsible for their own costs of all other services not common to the entire building. Each Suite shall be separately metered for utility services.
- 4.11 **Division of Common Costs.** The cost of all common costs related with the Association, (including, without limitation, water, sewer, garbage collection, electrical for the exterior of the building, lighting for the parking lot, and any other common costs) which are not separately to the individual Suites shall be paid by the Association and shall be deemed a common area maintenance expense and shall be charged to the Suite Owners, pro rata, in the CAM charges. Each respective Suite owner, shall be responsible for their own costs of all other services not common to the entire building. Each Suite shall be separately metered for utility services. The cost of such services which are not separately metered and billed to such individual Suites but which benefit all Suites and the project as a whole shall be paid by the Association as a Common Expense. Notwithstanding anything to the contrary contained within the preceding portion of this section in the event that any utility or municipal service is separately metered (if metering is applicable to the service in question) and billed to one or more Suites and a portion of such service benefits in whole or in the part any other Suite or Common Areas, the Association shall reimburse or credit the Owner of the Suite so billed for the cost of such portion: the determination of such portion, and the costs related thereto which shall be born by the association as a common

expense, shall be made by the association in a fair and reasonable manner on the basis of the best information reasonably available at the time, and shall be final and binding upon all Suite owners. The division of CAM charges is reflected in Exhibit "E" of this Declaration.

ARTICLE V EASEMENTS

- 5.01 **Encroachments.** If any part of the common areas encroaches or shall hereafter encroach upon a Suite or Suites an easement for such encroachment and the maintenance for the same shall and does exist. If any part of a Suite encroaches or shall hereafter encroach upon the common areas, or upon an adjoining Suite or Suites, an easement for such encroachment and for maintenance shall and does exist. Such encroachment shall not be considered to be encumbrances either in the common areas or the Suite. Encroachments refer to herein include, but are not limited to, encroachments caused by error in the original construction of the buildings on the tract, by error in the Plat, by settling, raising, or shifting of the earth, or by changes in the position caused by repair or reconstruction of the project or any part thereof.
- 5.02 **Repair of Common Areas.** If any part of the common areas are or may be located within any of the Suites or may be conveniently assessable only through the Suite, the owner of the other Suites shall have the irrevocable right to be exercised by the committee as the agent, to have access to each Suite unto all common areas from time to time during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas located therein or assessable there from or for making emergency repairs therein necessary to prevent damage to the common areas or another Suite or Suites the committee shall also have such rights independent of agency relationship. Damage to the interior or any part of the Suite or Suites resulting from the maintenance, repair, emergency repair, or replacement of any of the common areas or as a result of emergency repairs within another Suite at the instance of the committee or Suite owners, shall be an expense of all the Suite owners and assessed proportionately; provided that if such damage is the result of negligence of the owner of the Suite, his guests or invitees, then such owner shall be financially responsible for all such damage. The committee shall collect amounts owing by owners pursuant hereto by assessment pursuant to this declaration.
- 5.04 **Utility Services.** There is hereby created a blanket easement upon, across, over and under the Tract for ingress, egress, installation, replacing, repairing and maintaining the utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.
- 5.05 **Right of Ingress, Egress, and Support.** Each Suite owner shall have the right to ingress and egress over, upon and across the Common areas of plat A as necessary for access to his/her Suite, and to any Limited Common Area designated for use in connection with this Suite, and each owner shall have the right to the horizontal, vertical and lateral of his/her end and any adjoining Suite, and such rights shall be appurtenant to and pass with the title to each Suite.

ARTICLE VI

RESTRICTIONS

- 6.01 **Professional Use.** The tract is zoned for professional use pursuant to South Jordan City Ordinances and each Suite and Suite Owner are subject to uses and restrictions imposed thereby, including but not limited to, exclusive professional uses commonly found in professional complexes of the nature of the Project and for no other purposes.
- 6.02 **Leasing.** A Suite owner may lease his Suite for any term evidenced by a writing executed by the owner and the lessee/tenant and containing specific statement that such is subject to the provisions of this Declaration and as set forth in Sections 6.04 and 6.05 of this document. No Owner shall lease any part or all of his Suite, unless first approved in writing by the Declarant. Any lease approved by the Declarant shall specifically contain the restrictions as set forth in Sections 6.04 and 6.05 of this Declaration; meaning that any lessee shall only be permitted to practice in the corresponding Suite Owner's dental-type practice.
- 6.03 **Restrictions Concerning Common Areas.** There shall be no obstruction of the common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Management Committee. The Management Committee may by rules and regulations prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all the Owners or protecting the Suites or the common areas. Nothing shall be kept or stored on any part of the Common Areas without written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed on, or removed from the common areas except upon consent of the management committee. Individual for sale or for lease or for rent signs will be limited to window display and not exceed the size of 12" by 20" without written permission of the Association president.
- 6.04 **Specific Restrictions on Usage of Suite.** There shall be only one orthodontic practice in the project. Only Dr. Rodney G. Payne or his successor shall be permitted to have an orthodontic practice in the Project. No other Dental Professional shall be permitted to do orthodontic work on any patient in the project. Liquidated Damages in the amount of \$4,000.00 per occurrence shall be assessed against any offending Suite Owner. An occurrence for this section shall mean any patient in a Suite (other than the Suite owned by Dr. Payne or his successor) for orthodontic care. Furthermore, no Suite Owner, other than Dr. Payne or his successor, shall be permitted to advertise for orthodontic treatment and orthodontic care while practicing in the Project. In addition to the liquidated damages and injunctive relief, Dr. Rodney G. Payne shall be entitled to recover additional damages, and attorneys fees and costs from the offending Suite Owner.
- 6.05 **General Restriction on Usage of Suite.** All of the Suite Owners shall only be permitted to sell their Suite to a Dental Professional. Dental Professional shall be any practicing general dentist, or dental specialist with the expectation that a Suite will only be sold to a like-kind practitioner. For example, a general dentist may only sell his Suite to another general dentist. A endodontist may only sell his Suite to another endodontist. However, if the Suite Owner has difficulty selling his Suite to a like-kind practitioner, the Suite Owner may sell his Suite to another Dental Professional upon written approval of the Declarant.
- 6.06 **Miscellaneous Restrictions.** Nothing shall be done or kept in any Suite or in the common areas or any part of thereof which would result in the cancellation of the

insurance on the project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the management committee, but for such activity, would pay, without the prior written consent of the management committee. Nothing shall be done or kept in any Suite or in the common areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. No damage to, or waste of, the common areas or any part thereof shall be committed by any owner or any invitee of any owner, and each owner shall indemnify and hold the management committee and the other owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive or offensive activity shall be carried on in any Suite or in the common areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully occupying a Suite.

- 6.07 **No Pets or Animals.** No pets or animals of any kind or nature whatsoever shall be permitted or kept in any Suite, in the common areas, or in any other part of the Project.
- 6.08 **No Violation of Rules and Regulations.** No owner shall violate the rules and regulations for the use of the Suites and the common areas as adopted from time to time by the management committee.
- 6.09 **Restrictions on Alterations.** No structural alterations to any Suite shall be made by any owner without the prior consent of the management committee.
- 6.10 **Declarant's Right to Sell Suites.** Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Suites, the Suite Owners who have purchased Suites from the Declarant shall not interfere with the completion of the contemplated construction and sale of the remaining Suites. The Declarant may make such use of the unsold Suites and the common areas as may facilitate such completion and sale, including but not limited to the maintenance of a sales office, the showing of the Suites, and the display of signs.
- 6.11 **Restrictions on Signs.** No signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained at any place on the exterior of a building or on any other part of the project unless authorized in writing by the Declarant. There shall be two monument signs on the project where each Suite Owner shall have an assigned area on a monument sign where the name of their practice and/or company may be displayed. All other signage shall be prohibited with the exception that a Suite owner may place a banner sign on the lawn so long as it is approved in advance by the City and the Declarant. There shall be no restriction on having the professional's name and business name professionally placed on the front door of their office. All names placed on the front door must be approved by the management committee. Additionally, each Suite Owner shall be permitted to place their name or their business name on the exterior of the building as approved by the Declarant. Such signage on the building shall be in the same font and corresponding size as the sign placed on the building by the Declarant. Any signage by a Suite Owner shall be approved in writing by the Declarant prior to the signage being placed on the building.
- 6.12 **Zoning Compliance.** Notwithstanding the provisions of sections 6.09, any sign, banner, or similar devices located in the project shall comply with applicable zoning or sign ordinances of South Jordan City, Utah.

- 6.13 **Storm Water Protection and Prevention.** Nothing shall be done to contaminate or muddle the storm boxes, sumps and drainage; which includes, but is not limited to allowing and/or creating flows containing sediment, debris, garbage, construction product, chemicals, and/or erosion into or around storm water drainage sites.

ARTICLE VII INSURANCE

- 7.01 **Insurance and Bonds.** The management committee shall secure or caused to be secured and maintained at all times the following insurance or bond coverage with respect to the Project:
- (a) A policy or policies of fire and casualty insurance with extended coverage endorsement in the face amount of \$1,000,000 to \$2,000,000 shall be maintained by the management committee, but shall not include the contents of Suites. Such policy or policies shall be made payable to the committee and all persons holding an interest in the project or any of the Suites, as their interests may be.
 - (b) An appropriate fidelity bond coverage for any person or entirely handling funds of the management committee, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entirety at any given time during the bond term, all as determined by the management committee, but in no event less than a sum equal to three months' aggregate assessments on all Suites, plus reserve funds. The provisions of this section 7.01 (b) may be waived in writing signed by all owners.
 - (c) A policy or policies insuring the committee, the manager, and the Suite owners against any liability incident to the ownership, use or operation or the project, or of any Suite, which may arise among themselves, to the public, and to any invites or tenants, of the Project or of the Suite Owners. Limits of liability under such insurance shall not be less than \$500,000.00 for any person injured, resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis (or CGL policy, also known as a commercial general liability policy) and shall provide a cross liability endorsement pursuant to which the rights of the named insured as between themselves are not prodigious.
- 7.02 **Additional Insurance Provisions.** The following additional provisions shall apply with respect to such insurance:
- (a) In addition to the insurance described above, the committee shall secure and at all times maintain insurance against such risks as are or hereafter maybe customarily insured against connection with condominium projects similar to the project in construction, nature and use.
 - (b) The committee shall have the authority to adjust losses.
 - (c) Insurance secured and maintained by the committee shall not be brought into contribution with insurance held by the individual Suite owners or their mortgages.
 - (d) Each policy of insurance obtained by the committee shall, if possible, provide: a waiver of insurer's subrogation rights with respect to the committee, the manager, the Suite owners, and their respective servants, agents and guests; that it cannot be

cancelled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager without prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Suite owners.

- (e) Any Suite owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the committee. Any Suite owner who individually obtains insurance covering any portion of the project (other than for Suite contents) shall supply the Committee with a copy of this policy within 30 days.

Article VIII
DAMAGE, DESTRUCTION AND RESTORATION

- 8.01 In the Event of damage to or destruction of part of all improvements in the condominium project, the following procedures shall apply:
- (a) If proceeds of the insurance maintained by the management committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair for reconstruction shall be carried out as quickly as possible.
 - (b) If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and the proceeds of the insurance maintained by the committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out, and any Suite owner shall be assessed in proportion to their appropriate Suite damaged for any deficiency.
 - (c) If seventy-five percent (75%) or more of the project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the management committee are not alone sufficient to accomplish restoration, and if the Suite Owners, within one hundred (100) days after the destruction or damage, vote to repair or reconstruct the affected improvements, restoration and assessment therefore shall be accomplished in the manner directed under subsection (b) above.
 - (d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if the Suite owners do not within one hundred (100) days after the destruction or damage, vote to repair or reconstruct the affected improvements, the management committee shall promptly record with Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or of the Suites.
 - (e) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the management committee. Any determination which is required to be made by the article regarding the extent of the damage to or destruction of Project improvements shall be made by three qualified appraisers selected by the Management Committee.
 - (f) Any lost revenue of a Suite owner shall be subject to that Suite owner's own insurance coverage for such lost revenue. Neither the Project nor the Association shall be liable to a Suite owner for any lost revenue or lost profit.

ARTICLE IX
MORTGAGES AND MORTGAGE PROTECTION

- 9.01 **Notice of Mortgage.** Any owner who mortgages his Suite shall furnish the committee the name and address for such mortgagee, and the committee shall maintain such information in a book entitled "Mortgages of Suites." The committee shall report to such Mortgagee any unpaid assessments due from the Owner of such Suite at the same time as the Committee makes demand on the Owner thereof for payment of such assessment. Each Mortgagee shall also be entitled to written notification from the Committee of any other

default by its owner/Mortgagor in the performance of such owner's obligation under the term and provisions of this declaration which shall not have been cured within thirty (30) days after written notice to such owner/Mortgagor by the committee specifying such default.

- 9.02 **Right to Examine.** A mortgagee shall have the right to examine the books and records of the association and committee upon request and to require annual reports of the financial status of the Association.
- 9.03 **Notice of Damage.** In the event of substantial damages to or destruction of any Suite or any part of the common area, the mortgagor of any Suite shall be entitled to timely written notice of any such damage or destruction. No owner or other party shall be entitled to priority over such Mortgagees with respect to the distribution to such Suite of any insurance proceeds.
- 9.04 **Notice of Default.** Any Mortgagee is entitled to written notification from the Management Committee of any default by the owner of such Suite in the performance of any obligation under the declaration which is not cured within thirty (30) days.
- 9.05 **Effect of Foreclosure on Liens.** Each Mortgagee of a Suite who comes into possession of such Suite by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure sale, shall not take the Suite free of any unpaid claims or assessments or charges against the Suite which accrued prior to the time such holder comes into possession of the Suite. Any future owner of a Suite shall be responsible for all past claims, assessments, or charges against the Suite.
- 9.06 **General Mortgage Protections.** Unless all of the Mortgagees have given their prior written approval, neither the management committee nor the association of Suite owners shall:
- (a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.
 - (b) Change the pro-rata interest or obligation of any Suite for (i) purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds of condemnation awards or (ii) determining the pro-rata share of ownership of each Suite in the common areas;
 - (c) Make any material amendments to the Declaration or to the Bylaws of the Association including but not limited to any amendment which would change the percentage interest of the Suite owners in the Common Areas;
 - (d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements of public utilities or for other public purposes consistent with the intended use of the common areas of the project shall not be deemed a transfer within the meaning of this Section; or
 - (e) Use hazard insurance proceeds for losses to any Project property (whether to Suites or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided by the act in cases of substantial loss to the Suites and/or the common areas of the Project.

ASSOCIATION BY-LAWS

PURSUANT TO SECTION 57-8-15 OF THE ACT, THE ASSOCIATION'S BY-LAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES X, XI, AND XII. THE GENERAL PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE X MANAGEMENT COMMITTEE

10.01 Status and General Authority. Except as otherwise herein provided, the Condominium Project shall be managed, and maintained by the Management Committee as agent for the Association of Suite owners. The committee shall, in connection with its exercise of any of the powers hereinafter provided, constitute a legal entity capable of dealing in Association's name. The Management Committee shall have, and is hereby granted, the following authority and powers:

- (a) The authority without the vote or consent of the Suite Owners or any other person, except for the Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities.
- (b) The authority to execute and record, on behalf of all Suite owners, any amendments to the Declaration or the Plat which have been approved by the vote or consent of the Suite Owners necessary to authorize such amendments as set forth in Section 13.4 of this Declaration;
- (c) The Power to sue and be sued;
- (d) The authority to enter into contracts relating to the common areas and other matters over which it has jurisdiction, so long as any vote or consent of the Suite Owners necessitate by the subject matter of the agreement has been obtained;
- (e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any mortgagee if required by the terms of its mortgage.
- (f) The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by any vote or consent which is necessary under the circumstances.
- (g) The authority to promulgate such reasonable rules, regulations, and procedure as may be necessary or desirable to aid the committee in carrying out its functions or to insure that the project is maintained and used in a manner consistent with the interest of the Suite Owners; and
- (h) The power and authority to perform any other acts and to enter into any other transactions, subject to the rights of the Management Committee, which may be reasonably necessary for the Management Committee, which may be reasonably necessary for the Management Committee to perform its functions as agent for the Suite Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project that recites facts which, if true, would establish the committee's power and authority to accomplish said power and

instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

10.02 **Indemnification of Management Committee.** Each member of the Management Committee shall be indemnified and held harmless by the Suite Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Committee.

10.03 **Composition of Committee: Declarant Control.** Until the happening of all of the following three events, the Management Committee shall be composed solely of Dr. Rodney Payne.

- (a) The expiration of one hundred twenty (120) days following the conveyance of title to Suites representing one hundred percent (100%) of the total outstanding association votes; and
- (b) The expiration of three (3) years after the first conveyance of title to any Suite purchaser.
- (c) Dr. Rodney Payne sells his orthodontic practice to successor and specifically resigns his position as the sole Manager of the Association, in writing.

Provided, however, that Declarant may waive such right, in whole or in part at any time prior to the occurrence of either or both of the aforesaid events by (i) giving notice to the Suite Owners of such waiver of such form and (ii) filing for record in the Office of Salt Lake County Recorder a written notice of waiver of such right, whereupon Suite Owners shall promptly hold a meeting to elect a new management committee, it being established hereby that the control of the Suite Owners in the Management Committee shall automatically vest thirty (30) days following the date such waiver is recorded. In the event of a committee seat which was filled by an appointee of Declarant becomes vacant, Declarant has the right to select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected.

10.04 **Management Committee: Composition, Election, Vacancies.** Subject to the provisions of Section 10.03 above, the committee shall be composed of three (3) members, one to be elected to a three-year term, one to a two-year term, and one to a one-year term. As member's terms expire, new members shall be elected for three-year terms. Members shall serve on the committee until their successors are elected and the Committee must be owners or officers, directors, agents or employees of non-individual Owners. Vacancies in the Committee membership may be filled by appointment by the remaining members or member of the committee and said appointees shall serve until the next annual meeting when the successor shall be elected for the unexpired term of the member they were appointed to replace.

10.05 **Rights and Duties.** The Management Committee, subject to the rights and duties of the Suite Owners, this Declaration, and the By-laws, shall be responsible for the general management and administration of the Project. It is understood that the committee has the obligation to provide for maintenance of the Common Areas.

- 10.06 **Exterior Maintenance.** In connection with its duty to maintain common areas, the Committee will provide maintenance upon the exterior of the buildings and Suites, and the common area as follows: Paint, repair, replace, maintain and care for roofs, gutters, downspouts, exterior building surfaces, street lights, storm drain boxes, sumps and drainage, trees, shrubs, grass, walks, driveways, parking areas, stairways and other exterior improvements except glass surfaces unless such surfaces are part of Common Areas.
- 10.07 **Right of Declaration to Manager.** The Manager Committee may carry out any of its functions which are capable of delegation through a manager. The manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.
- 10.08 **Payment for Services, Etc.** The Management Committee may obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation and function of the Project, including the enforcement of this Declaration. The Committee may also hire other persons to furnish snow removal, ground maintenance and other common services to the Project.
- 10.09 **Personal Property Ownership and Use.** The Management Committee may acquire and hold for the use and the benefit of all the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in and to the Common Areas and transferable only with the transfer of a Suite.
- 10.10 **Rules and Regulations.** The Management Committee may make reasonable rules and regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights at any meeting of Suite Owners or for period during which such Owner fails to comply with such rules and regulation, or with any other obligations under this Declaration. If a Suite is out of compliance for any reason, the Management Committee shall provide a written notice to the Suite owner outlining the violation. The Suite out of compliance shall have fourteen (14) days from the date of the notice to bring the offending Suite into compliance. If the offending Suite is not brought into compliance within the fourteen (14) days, the Management Committee can impose a fine of \$ 100.00 per day thereafter to the Suite. All fine amounts shall bear interest at the rate of 14% per annum. The Management Committee may thereafter, enter the Suite and bring the Suite into compliance. All fees and costs associated with bringing the Suite into compliance shall be borne by the offending Suite. If the offending Suite does not pay the fines or costs of bringing the Suite into compliance within twenty (20) days of notice of the same, the Management Committee may then record a lien against the Suite and may file suit to foreclose on the lien. The Management Committee may also take any judicial action against any Owner to enforce compliance with such rules and regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by law.
- 10.11 **Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas without prior approval of the Suite Owners.

- 10.12 **Extended Rights.** The Management Committee may exercise any other right or privilege given to it expressly by this Declaration or by law and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein to reasonably necessary to effectuate any such right or privilege.
- 10.13 **Architectural Control.** The committee shall act in all matters pertaining to architectural control of the project and shall establish rules and procedures for submitting plans for approval of any proposes construction, alteration, remodeling, etc., involving the exterior of any Suite.
- 10.14 **Committee Meetings, Quorum, Board Action.** The Committee may establish its rules for meetings, whether regular or special. A majority of current Committee members shall constitute a quorum and the action of a majority of those attending a meeting at which quorum is present shall be sufficient to constitute the action of the Committee. Action by consent shall require the unanimous consent of all current Committee members.
- 10.15 **Management by Dr. Rodney Payne.** Notwithstanding any other provision contained in this declaration, until Dr. Rodney Payne resigns as the sole Manager of the Association, the Management Committee shall not be formed; rather, Dr. Rodney Payne shall constitute the sole Manager and Management Committee. Once Dr. Rodney Payne resigns his management position, then a Management Committee shall be formed pursuant to the remaining provisions of this declaration.

ARTICLE XI ASSOCIATION VOTING, MEETINGS AND OFFICERS

- 11.01 **Voting.** The association shall have a total of four (4) votes which shall be allocated as set forth in Exhibit "D" hereto. As used throughout this Declaration, the phrases "vote of the Owners", "approval of the Owners", "Owners vote", "consent of Owners", or words of similar impart, shall be deemed to require a majority of the total interest of all owners. The association shall have no voting rights.
- 11.02 **Multiple Ownership.** In the event there is more than one Owner of a particular Suite, the vote relating to such Suite shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Suite be cast with respect to any issue. A vote cast at any association meeting or by written consent by any of such owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Suite concerned unless an objection is made at the meeting or in writing by another Owner of the same Suite, in which event no vote will be counted with respect to such Suite except to determine the presence or absence of a quorum.
- 11.03 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Management Committee in its notice.
- 11.04 **Annual Meetings.** Annual Meetings of members of the Association shall be held in the month of September of each year beginning in the year 2012 on such day and time as is set forth in the notice thereof; provided, that after the first such annual meeting, a month other than September may be chosen if it is deemed by the Members to be more convenient. At such annual meetings there shall be elected members of the Management Committee, as needed, pursuant to the provisions of the Declaration. Financial and

- budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.
- 11.05 **Special Meetings.** The President shall call a special meeting of Owners as directed by a resolution of the Management Committee or upon the request of any Owner. No business shall be transacted at a special meeting except as stated in the notice therefore unless consented to by all of the Owners, either in person or by proxy.
- 11.06 **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. mail or by delivery in person shall be considered notice served.
- 11.07 **Quorum.** Owners present at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special.
- 11.08 **Officers.** The association shall have a President, a Vice President and a Secretary/Treasurer each of whom shall be elected by and from the Management Committee. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Management Committee in an organization meeting of the committee immediately following each annual meeting of Members at which the new management Committee has been elected.
- (a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Management Committee. He shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.
- (b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Committee.
- (c) **Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association. He shall have charge of such books and records as the Management Committee may direct and shall be, in general, perform all duties incident to the office of secretary of similar type association. He shall be responsible for the deposit of all money and other valuable effects in the name and the credit of the association in such depositories as may from time to time be designated by the Management Committee.

ARTICLE XII ASSESSMENTS

- 12.01 **Agreement to pay Assessments.** Each Owner of a Suite, by the acceptance of a Deed or contract therefore, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with all other Suite Owners and with the Management Committee to pay annual assessments for the purposes provided in this declaration, and special assessments for capital improvements and other matters as provided in this declaration. Such assessments shall be fixed, established and collected from time to time

in the manner provided herein by the Management Committee, which alone shall have such power to assess.

- 12.02 **Basis of Assessments.** All assessments shall be uniform in application. The total annual assessments against all Suites shall be based upon a budget of advance estimates of cash requirements by the management committee to provide for the payment of all estimated common expenses growing out of or connected with the maintenance and operation of the common areas and/or the project, which estimates may include among other things, expenses of management, taxes and special assessments, if any, levied by governmental authorities; premiums for all insurance which the management committee is required or permitted to maintain pursuant hereto; common lighting, water, repair and maintenance of the Common Areas; wages for employees of the committee; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Committee for the benefit of the Owners or by reason of this Declaration.
- 12.03 **Apportionment of Expenses.** Expenses attributable to the common areas; to the common areas; and to the project as a whole shall be apportioned among all Suites in proportion to their respective interest as set forth in Exhibit "E" attached hereto.
- 12.04 **Method, Payment of Assessments, Etc.** Annual assessments shall be made on a calendar year basis. The committee shall give written notice to each Owner as to the amount of the annual assessment with respect to his/her Suite not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year; provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the day fixed by the committee as the date of commencement of the assessment. Such annual assessment may be paid in twelve (12) equal monthly payments, each monthly payment shall be due and payable on the first day of each and every month, in advance. The Committee may if it is deemed best to alleviated administrative item and effort, require that the annual assessment be paid in four (4) quarterly installments, in advance. Each monthly or quarterly payment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.
- 12.05 **Initial Fees.** In addition, each owner shall be required to prepay at the time of Suite purchase, whether as a first time or subsequent Owner, a one-time sum equal to three times the then monthly installment of the annual assessment. Such fees shall become part of the Association's general fund to be utilized as necessary and shall be in addition to monthly installments which shall commence as to an owner when he/she becomes and Owner.
- 12.06 **Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Suite to and Owner, the maximum annual assessment shall be \$500.00 per Suite. From and after January 1 of the calendar year immediately following the conveyance of the first Suite to an Owner, the maximum annual assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast the number of Association votes required to amend this Declaration. During the time that the Management Committee is comprised solely of Dr. Rodney Payne, the amount of the annual assessment shall be determined

based on actual costs and necessary float to maintain the building in a professional manner according to his professional judgment.

12.07 **Special Assessments.** In addition to the annual assessment authorized hereunder, the management committee may levy in any assessment year special assessments, subject to the provisions of section 10.10, above, payable over such period as the management committee may determine for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, or for any other expenses, but shall be construed as an independent source of authority for the expenses authorized herein. Any amount assessed pursuant hereto shall be apportioned to Owners on the same basis set forth in Section 12.03, above. Notice in writing of the amount of such special assessment and the time for payment thereof shall be given promptly to the owners, and no payment shall be due less than thirty (30) days after such notice shall be given. A special assessment, or any portion thereof as determined by the Committee, shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

12.08 **Liens for Unpaid Assessments.** All sums assessed to any Suite pursuant to this article, together with interest thereon as provided herein, and all costs and expenses incurred, with or without suit or before or after judgment, in collecting delinquent accounts or foreclosing against the condominium Suites concerned, shall be secured by a lien on such Suite in favor of the Association and, upon recording of a notice of lien by the Management Committee, shall be a lien upon the Suite prior to all other liens and encumbrances, recorded or unrecorded, except:

- (a) Tax and special assessment liens on the Suite in favor of any assessing agency or special improvement district; and
- (b) Liens of Mortgages; and
- (c) Any other encumbrances on the interest of the Suite Owner recorded prior to the date notice of the lien provided for herein is recorded, which by law would be a lien prior to subsequently recorded encumbrances.

To evidence a lien for sums assessed pursuant to this Article, the Management Committee shall prepare a written notice of lien setting forth the amount of the assessment, the due date, the amount remaining unpaid, the name of the Owner of the Suite, and a description of the Suite. Such notice shall be signed by or on behalf of the Management Committee and may be recorded in the Office of the County Recorder of Salt Lake County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by foreclosure by the Management Committee in the same manner in which a mortgage or trust deed on real property may be foreclosed in Utah. In any such foreclosure, the owner shall be required to pay the cost and expenses of such proceeding, the cost and expenses of filling the notice of lien, and all reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The lien shall also secure, and the owner shall also be required to pay to the Management Committee any assessments against the Suite which shall become due during the period of foreclosure. The management committee shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and, if it is the purchaser, to acquire, hold, convey,

lease, rennet, encumber, use and otherwise deal with the subject Condominium Suite as the Owner thereof.

- 12.10 **Payment by Encumbrancer.** Any encumbrancer holding a lien on a Suite may, but shall not be required to, pay any amounts secured by the lien created by this Article, and upon such payments such encumbrancer shall be subrogated to all rights of the Management Committee with respect to such lien, including priority. The Management Committee, upon written request and evidence of such encumbrance, shall report to any encumbrancer of a Suite any unpaid assessments remaining unpaid for longer than thirty (30) days after the same shall have become due.
- 12.11 **Personal Obligation of Owner.** The amount of any annual or special assessment against any Suite shall be the personal obligation of the Owner thereof to the association. Suit to recover a money judgment for such personal obligation shall be maintainable by the securing the same. No Owner may avoid, diminish or abate such personal obligation by waiver of the use and enjoyment of any of the Common Areas by abandonment of his Suite, or by making a claim for inconvenience or discomfort caused by construction or repairs, or the lack thereof, within the Project.
- 12.12 **Information Concerning Unpaid Assessments.** Upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00) and upon written request of any Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Suite, the Management Committee shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Suite; the amount of the current annual assessment and the portion thereof, if any, which has theretofore been paid, and the credit for advance payments of prepaid items; including, but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Management Committee in favor of persons who rely thereon in good faith.
- 12.13 **Purchaser's Obligation.** A purchaser of a Suite shall be jointly and severally liable with the seller thereof for all unpaid assessments against the Suite up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessment.

ARTICLE XIII GENERAL PROVISIONS

- 13.01 **Enforcement.** Each Suite Owner shall comply strictly with the provisions of this Declaration, the Bylaws, the administrative rules and regulations promulgated pursuant thereto as the same may be lawfully adopted from time to time, and with the decisions adopted pursuant to this Declaration, Bylaws and such administrative rules and regulations. Defaulting Suite Owners shall pay all costs and expenses incurred in enforcing the provisions hereof, including reasonable attorney's fees and costs and moneys paid and due for damages or injunctive relief, or both, maintainable by the Management Committee on behalf of the Association of Suite Owners, or in a proper case, by an aggrieved Suite Owner
- 13.02 **Party Walls.** Each wall which is built as a part of the original construction of the Suites upon the Project and placed on the dividing line between Suites shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- 13.03 **Amendments.** (1) By Owners: The vote of the Owners pursuant to Section 11.1 shall be required to amend this Declaration (including the Association Bylaws set for herein). Any amendment so authorized shall be accomplished through the recordation of the instrument executed by the Management Committee. In such instrument the committee shall certify that the vote required by this Section for amendment has occurred; (2) By Declarant: Declarant shall have the right to amend the Plat and/or this Declaration at any time by filing such amendment with the Salt Lake County Recorder's Office.
- 13.04 **Consent Equivalent to Vote.** In those cases in which the Act or this Declaration requires the vote of a stated percentage of ownership interest for the authorization or approval of a transaction such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing so such transaction from Suite Owners who singly or collectively hold at least the necessary percentage of ownership interest. This provision shall only apply after Dr. Rodney Payne is no longer the Manager of the building.
- 13.05 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Suite or in the Project, and to their respective grantees, lessees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each owner or occupant of a Suite shall comply with, and all interests in all Suites shall be subject to, the terms of the Act, the provisions of this Declaration and the rules, regulations, agreements, instruments, and grounds for a action to recover sums due for damages or injunctive relief or both maintainable by the Committee on behalf of the Association of Suite Owners, or, in a proper party acquiring such interest consents and agrees to be bound by each and every provision of this Declaration.
- 13.06 **Agent for Service of Process.** Jeremy Eveland, whose address is 8833 South Redwood Road, Suite C, West Jordan, Utah 84088, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the management committee shall have the right to appoint a successor agent for service of process who shall be a resident to Utah. Such successor and his address shall be specified by an appropriate amendment filed in the Office of the Recorder of Salt Lake County, Utah.
- 13.07 **Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches which may occur.
- 13.08 **Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular member shall include the plural and the singular. The use of any gender shall include all genders.
- 13.09 **Severability.** If any of the provisions of this Declaration or any Article or Section, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected by such invalidity.
- 13.10 **Topical Headings.** The headings appearing at the beginning of the sections or Articles of this Declaration are only for the convenience or reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration or any section or provision hereof.

- 13.11 **Effective Date.** This Declaration shall take effect upon recording in the Office of the County Recorder of Salt Lake County, Utah.
- 13.12 **Parking Lot.** Each Suite shall be assigned general parking guidelines as set forth in Exhibit "G." Suite owners shall direct their employees to park their motor vehicles on the outer rim of the parking lot so as to maintain the parking spaces closest to the building for building patrons.
- 13.13 **First Right of Refusal.** Should any Suite owner decide to sell its respective Suite in the Project, the Declarant shall have the first right of refusal to buy the Suite owner's Suite at the same terms and under the same conditions as a bona fide offer. Once the Suite Owner has a bona fide offer, he shall give written notice of such offer to the Declarant; from the date of notice, Declarant shall have a 15 day period of time, if Declarant will exercise its first right of refusal. If Declarant does nothing within the 15 day period, then Declarant's right shall automatically expire. If Declarant chooses to exercise his first right of refusal, Declarant must give written notice. As long as the specified criteria of Section 6.05 is met, then written approval shall not be unreasonably withheld.
- 13.14 **Easement Assessment** Pursuant to the terms of an easement regarding the road adjacent to the Project, each Suite Owner shall be assessed one-half (1/2) of the cost for the re-paving of the road annually in amounts corresponding to percentage of square feet. The anticipated amount for one-half (1/2) of re-paving the road is \$10,000.00 which shall occur in approximately 15 years. Accordingly, the following Easement Assessment will correspond to Suite Owners annually as follows: Suite 1 in the amount of \$200.00; Suite 2 in the amount of \$146.67; Suite 3 in the amount of \$146.67; and Suite 4 in the amount of \$173.33. This amount may change depending on actual costs of re-paving the road and each Suite Owner shall bear the corresponding cost based on Exhibit "E." This shall be an ongoing and continuing assessment for each Suite Owner.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first set forth above.

SIGNATURES ON THE FOLLOWING PAGE

DECLARANT:

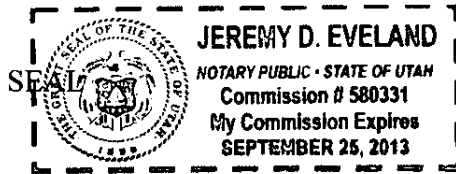
Payne Property Enterprises, LLC

By Rodney Payne
Name: Rodney Payne
Its: Manager

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

BEFORE ME a Notary Public in and for the State and County aforesaid, personally appeared Payne Property Enterprises, LLC by Rodney Payne, its Manager, who acknowledged that he did sign the foregoing instrument and that the same was the free act and deed of him and the free act and deed of the company.

WITNESS my hand and seal this 13th day of April, 2012.



Jeremy D. Eveland
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PAYNE PROFESSIONAL PLAZA CONDOMINIUMS

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 10400 SOUTH STREET, SAID POINT ALSO BEING ON THE EASTERLY LINE OF LOT 3, HARVEST VILLAGE AT SOUTH JORDAN SUBDIVISION PHASE 1, SAID POINT ALSO BEING NORTH 89°44'02" WEST 1634.03 FEET AND SOUTH 1533.39 FEET FROM THE NORTHEAST CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°24'43" WEST ALONG THE EASTERLY LINE OF LOT 3, HARVEST VILLAGE AT SOUTH JORDAN SUBDIVISION PHASE 1 201.81 FEET TO THE SOUTHERLY LINE OF SAID LOT 3; THENCE NORTH 89°35'24" WEST ALONG SAID SOUTHERLY LINE 241.41 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT(CHORD BEARS NORTH 44°35'24" WEST 42.43 FEET) WITH A DISTANCE OF 47.12 FEET TO THE WESTERLY LINE OF SAID LOT 3; THENCE NORTH 00°24'47" EAST ALONG SAID WESTERLY LINE 119.48 FEET TO A NON-TANGENT CURVE; THENCE ALONG THE ARC OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 26°57'49" EAST 44.70 FEET) WITH A DISTANCE OF 46.34 FEET TO A POINT OF CURVATURE TO THE SOUTHERLY RIGHT OF WAY LINE OF 10400 SOUTH STREET; THENCE ALONG SAID SOUTHERLY LINE ALONG THE ARC OF A 7549.89 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 86°49'05" EAST 94.48 FEET) WITH A DISTANCE OF 94.48 FEET; THENCE NORTH 88°10'29" EAST ALONG SAID SOUTHERLY LINE 151.39 FEET TO A POINT OF CURVATURE; THENCE ALONG SAID SOUTHERLY LINE ALONG THE ARC OF A 7568.50 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 85°17'35" EAST 5.88 FEET) WITH A DISTANCE OF 5.88 FEET TO THE POINT OF BEGINNING.

CONTAINS 52,671 SQUARE FEET
1.209 ACRES

EXHIBIT B
(Description of Building)

See attached drawings.

EXHIBIT "C"

Condominium Suites

Professional Building Condominium Suite	Square Footage
1	4000
2	3000
3	3000
4	3500

Total Private Ownership Square Footage: 13,500

EXHIBIT "D"

Voting Allocation

The total 4 votes available will be allocated equally among the four (4) Suites.

Condominium Suites

Professional Building Condominium Suite	Voting Allocation
1	30 votes
2	22 votes
3	22 votes
4	26 votes

Total Votes: 100

EXHIBIT "E"

Apportionment of Expenses

Expenses for maintaining the exterior of the building and all common areas shall be apportioned as described below among the four (4) Suites.

Condominium Suites

Professional Building
Condominium Suite

	Apportionment
1	30%
2	22%
3	22%
4	26%

EXHIBIT "F"

Apportionment of Undivided Ownership Interests in and to the Common Areas and Facilities

Condominium Suites

Professional Building
Condominium Suite

	Apportionment
1	30%
2	22%
3	22%
4	26%

EXHIBIT "G"

Map of corresponding employee parking areas.

