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RANDALL A. COVINGTON
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RECORDED FOR LINDON CITY CORPORATION

DECLARATION OF CONDOMINIUM
FOR
WHITE, INC. LOT 1 CONDOMINIUMS
a Utah Commercial Condominium Project
Lindon, Utah

DECLARANT:
SRW-1, LLC

WHEN RECORDED RETURN TO:

SRW-1, LLC
682 E. Healey Blvd.
Alpine, UT 84004

**DECLARATION OF CONDOMINIUM
FOR THE WHITE, INC. LOT 1 CONDOMINIUMS**
(a Utah Commercial Condominium Project)

This Declaration of Condominium for the White, Inc. Lot 1 Condominiums is made and executed by SRW-1, LLC, a Utah Liability Company, with principal contact address of 682 E. Healey Blvd., Alpine, UT 84004 (the "Declarant").

RECITALS

A. Certain subject Property located in Lindon, Utah is zoned for commercial-professional use and is located in a desirable, accessible area within proximity to transportational routes, associated commerce and professional markets.

B. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create an office condominium complex in which utility shall be substantially enhanced, which will preserve the desirability of working or officing in units on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the land and improvements therein.

C. This Declaration of Condominium affects that certain real property located in Utah County, Utah described with particularity in Article II below, or attached exhibits (hereinafter referred to as the "Tract" or the "Property").

D. Declarant is the owner and developer of the Property.

E. Declarant or its predecessor has constructed upon the Property one or more buildings which, pursuant to the stated intent of this declaration, Declarant intends to divide into specific Units, Limited Common Area, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Condominium Plat to be recorded concurrently herewith.

F. Declarant intends to sell to various purchasers the fee title to the individual Units included in the Property, together with an appurtenant undivided ownership interest in the Common Areas and a corresponding membership interest in the Association of Unit Owners, subject to the Condominium Plat, the covenants, conditions and restrictions set forth herein.

G. Declarant desires, by filing this Declaration of Condominium and Condominium Plat, to submit the Property and all improvements now or hereafter constructed thereon to the provisions of the Utah Condominium Ownership Act (the "Act").

H. The Project is to be known as "The WHITE, INC. LOT 1 CONDOMINIUMS."

AGREEMENT

DECLARANT HEREBY DECLARES that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes (hereafter, "CCRs"). The said CCRs are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals. The City of Lindon is intended to be a third party beneficiary of this agreement.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. **Act** or "**the Act**" shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated (as may be amended from time to time)

2. **Additional Charges** shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association in addition to Assessments.

3. **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of The WHITE, INC. LOT 1 Owners Association, Inc. to be filed with the Utah Department of Commerce.

4. **Assessment** shall mean and refer to any amount imposed upon, assessed or charged a Unit Owner or Owner at the Project.

5. **Association** shall mean and refer to the Unit Owners at WHITE, INC. LOT 1 CONDOMINIUMS taken as or acting as, a group in accordance with the Declaration.

6. **Building** shall mean and refer to any of the structures constructed in the Project.

7. **Business Use and Trade** shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in full or part-time; b) such activity is intended to or does generate a profit; or c) a license is required therefore.

8. **Bylaws** shall mean and refer to the Bylaws of the Association, when formed and registered with the State of Utah.

9. **Capital Improvement** shall mean and refer to all new improvements intended to

add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

10. **Committee** shall mean and refer to the Management Committee of the Association as duly constituted.

11. **Common Areas or Common Areas and Facilities** shall mean and refer to all real property in the Project owned in common by the Unit owners including but not limited to the following items:

- a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units.
- b) All Limited Common Areas and Common Areas and Facilities designated as such in the Condominium Plat;
- c) All Limited Common Areas as defined in the "Act" and designated as such in the Condominium Plat;
- d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water and sewer;
- e) The Project's outdoor grounds, entry monument or marker, lighting, perimeter fences, landscaping, sidewalks, parking and roadways;
- f) All portions of the Project not specifically included within the individual Units; and
- g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

Provided, however, utility installation such as telephone, electricity, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

12. **Common Expense** shall mean and refer to all items and sums described in the Act which are lawfully assessed against Unit Owners including but not limited to: (a) All sums lawfully assessed against the Owners; (b) Expenses of administration, maintenance, repair or replacement of the common areas or facilities; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (e) Expenses declared common expenses by this Declaration.

13. **Community** shall mean and refer to the Project and the various owners within.

14. **Community Wide Standard** shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the same professional or commercial arena and community, as determined by the Management Committee from time to time.

15. **Condominium Plat** shall mean and refer to the Condominium Plat of The WHITE, INC. LOT 1 CONDOMINIUMS on file in the office of the County Recorder of Utah County, as amended or supplemented from time to time.

16. **Declaration** shall mean and refer to this Declaration of Condominium for The WHITE, INC. LOT 1 CONDOMINIUMS as may be amended or supplemented. Any ambiguities, omissions, and/or conflicts herein shall be construed to comply with the provisions of the Act.

17. **Design Guidelines** shall mean and refer to the architectural style, look and feel as well as engineering plans and specifications and guidelines prepared by the Declarant in construction existing upon the Property, including by way of illustration but not limitation all structural components, color schemes and finish materials. Lindon City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion, as may the Management Committee.

18. **Eligible Insurer** shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

19. **Eligible Mortgagee** shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

20. **Eligible Votes** shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "*eligible vote*".

21. **Guest** shall mean and refer to an invitee, temporary visitor, client or any person whose presence within the Project is approved by or comes at the request of a particular Owner.

22. **Land** shall mean and refer to all of the real property subject to this Declaration.

23. **Lender** shall mean and refer to any mortgagee or holder of a beneficial interest by way of a trust deed or other security instrument that is not in first priority position on any part of the Property.

24. **Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration or in the Condominium Plat as reserved for the use of one or more specified Unit Owners to the exclusion of other Unit Owners. Any portico, colonnade,

Unit entry, doorsteps, landings, specifically assigned parking spaces, storage lockers/closets, or other improvements intended to serve only a single Unit or specific Units, shall constitute Limited Common Area appertaining to the Unit or Units exclusive of all other Units, whether or not the Condominium Plat makes such a designation.

25. **Majority** shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

26. **Management Committee** shall mean and refer to the committee of Owners elected to direct the affairs of the Association

27. **Manager** shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

28. **Map** shall mean and refer to the Condominium Plat.

29. **Member**, unless the context clearly requires otherwise, shall mean and refer to the Owner of a Unit, each of whom is obligated, by virtue of his ownership to be a member of the Association.

30. **Mortgage** shall mean and refer to both a first mortgage or first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.

31. **Mortgagee** shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit, but shall not mean or refer to a seller under an executory contract of sale.

32. **Owner** (or Member) shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Utah County, Utah) of a fee or an undivided fee interest in a Unit, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

33. **Period of Declarant's Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) five (5) years from the effective date of this Declaration, (b) not less than 120 days after 4 of the Units have been conveyed to other Owners, or (c) the Declarant executes and records a written Waiver of its right to control.

34. **Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

35. **Project** shall mean and refer to this: The WHITE, INC. LOT 1 CONDOMINIUMS Project.

36. **Project Documents** shall mean and refer to the Declaration, ByLaws, Rules and Regulations, and Articles of Incorporation associated with this project and the Association, together with Survey Maps and other documents recorded with the Utah County Recorder pursuant to this Declaration or the Project.

37. **Property** shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to the Act and this Declaration.

38. **Recreational, Oversized or Commercial Vehicle** shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

39. **Repair** shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

40. **Size** shall mean and refer to the number of square feet of ground or floor space, within each Unit, as computed by reference to the Condominium Plat and rounded off to a whole number. Certain spaces within a Unit including, without limitation, attic, basement or garage space may, but need not be omitted from the calculation or be partially discounted by the use of a ratio, if the same basis of calculation is employed for all Units.

41. **Unit** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more distinct spaces located in one or more floors or part or parts of floors, in a building. Mechanical equipment and appurtenances located within anyone Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all surfaces of interior walls, floors and ceilings, including but not limited to all paint, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any-other property of any kind, including fixtures of appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit. The space between adjacent Units (party walls) shall belong $\frac{1}{2}$ to each Unit except that any apparatus, systems or equipment, fixtures and the like within such space that serves one Unit or the other shall belong to the Unit served. If any such item or system serves both Units or some Units but not all Units, it shall be considered Limited Common Area. If it serves all Units, it shall be Common Area or facilities.

42. **Unit Number** shall mean and refer to the number, letter or combination thereof designating a particular Unit in the context of the Project or pursuant to City street numbering schemes.

II. SUBMISSION

The Land described with particularity on Exhibit "A" attached hereto and incorporated herein is hereby made subject to and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of Lindon City to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations, up to the Owner's meters.

The Land is SUBJECT TO the described easements and rights-of-way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements as are depicted on the Condominium Plat and/or any Exhibit "A" attached hereto.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including, by way of illustration and not limitation, all easements and rights-of-way in and to any detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservation and, exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the, above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. **Description of Improvements.** The Project will consist of six (6) ground-level, separate units. Unit 100 shall encompass approx. 7,178 sq. ft.; Unit 200 shall encompass 8,479 sq. ft.; Units 300, 400 and 500 shall encompass approx. 8,852 sq. ft.; Unit 600 shall encompass approx. 7,501 sq. ft.. The units will be roughly rectangular, with an angled delivery dock at the rear of each unit. Unit walls will not exceed 30 feet in height. Exterior walls are concrete tilt-up. Interior dividing walls between units 400 and 500 and between

walls are concrete tilt-up. Interior dividing walls between units 400 and 500 and between units 500 and 600 are wood stud with plywood sheeting. Other dividing walls are metal stud walls with dry wall sheeting. The units will be situated in a row running East to West when viewed from the front.

All Units will be numbered sequentially beginning with Unit 100 (located at the West end of the row) and moving Eastward to Unit 600.

The Units are concrete tilt-up structures, with metal roof, concrete foundations, painted concrete wall (unit fronts) with decorative rock and stucco. Each unit front will also include a standard access 1 man door and will include a window. Each unit except unit 100 will have a 12x12 overhead roll-up (bay) door as well as a standard 1 man dock door. Unit 100 will not have a dock door.

2. Description and Legal Status of the Property. The Condominium Plat shows each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered and conveyed; and shall have an appurtenant undivided percentage of ownership interest in the Common Areas and Facilities, subject to the rights of Declarant, the City, and all easements of record.

3. Membership in the Association. Membership in the Association is mandatory; each Unit Owner is a member of the Association and membership may not be partitioned from the ownership of a Unit.

4. Allocation of Profits, Losses and Voting Rights. Profits, losses and voting rights shall be distributed among the Owners equally. The percentage of ownership interest in the Common Areas and Facilities appurtenant to each Unit is equal. The undivided interest of each Unit Owner in the Common Areas and Facilities shall have a permanent character and shall not be altered without the consent of two thirds (2/3) of the Unit Owners expressed in an amended declaration duly recorded.

5. Limited Common Areas. Limited Common Areas are also Common Areas. Limited Common Area may not be partitioned from the Unit to which it is appurtenant. The exclusive use of Limited Common Area is reserved to the Unit to which it is assigned on the Condominium Plat, as amended from time to time.

6. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of Unit No. ____ within the WHITE, INC. LOT 1 CONDOMINIUMS, as the same is identified in the Condominium Plat recorded in Utah County, Utah as Entry No. ____ in Book ____ at Page ____ of the official records of the County Recorder of Utah County, Utah (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium for The WHITE, INC. LOT 1 CONDOMINIUMS, recorded in

Recorder of Utah County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above- specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

7. Architectural and Design Guidelines. The City shall assume no responsibility for enforcement of any Design Guidelines that may be prepared by Declarant, but reserves the right to and may enforce any Design Guideline at anytime and in its sole discretion. Any Design Guidelines shall apply to all construction activities within the project and shall be consistent with existing construction. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property; provided however, that approved Design Guidelines may not be changed, amended, or supplemented without the express written consent of the City. If the Declarant submits and obtains approval of Design Guidelines, after transition of the Project, the Association, must stamp all proposed plans and specifications to construct or remodel a Building or Unit as "approved and in compliance with the Declaration and Design Guidelines" before presenting such plans and specifications to the City for the issuance of a building permit.

8. Ownership and Use Restrictions. Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his Unit, to an undivided percentage of ownership interest in the Common Areas and applicable Limited Common Areas, and to membership in the Association as set forth herein, subject to the following use restrictions:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by persons. The Common Areas shall only be used in a manner consistent with the nature of the Project.

b) Title to the Common Area. Each Unit Owner shall be entitled to an undivided percentage of undivided ownership interest in and to the Common Areas and Facilities, equal to the ratio of an owned Unit to the total of all Units, and clear of all liens (other than current years taxes, if any) prior to the Declarant's first conveyance of a Unit. No Unit Owner may bring an action to partition Common or Limited Common Areas or Facilities.

c) Mandatory Association. Each purchaser of a Unit, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a member of the

Association.

d) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

(1) The right of the Association to limit the number of guests or clients, and to adopt administrative rules and regulations from time to time governing the use of Common Areas;

(2) The right of the Association to suspend the voting rights and the privilege to use Common Area by a member or their guests or clients for: (a) any period during which the member's Common Area Assessment remains delinquent, and (b) a period not to exceed thirty (30) days after notice and hearing as maybe set forth hereinafter for any infraction of the Association rules;

(3) (where appropriate), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Declarant's Period of Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

e) Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative and/or house rules and regulations and, in its sole discretion, to impose reasonable user fees for the amenities. Such rules, regulations and use restrictions shall be binding upon all Owners and Owners, their guests, clients and invitees.

(1) *Parties, Bound.* All provisions of the Project Documents shall be binding upon all Owners and Owners, their families, guests and invitees.

(2) *Nuisance.* It shall be the responsibility of each Owner and Owner to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly condition on, in or about his Unit or the Common Areas;

b. Maintaining any devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community or project by other Owners, their guests, clients or invitees.

c. Unreasonable amounts of noise or traffic in, on or about any Unit or

the Common Area, especially between the hours of 8:00 a.m. and 6:00 p.m.; and

d. Drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; or any gathering or use which bothers, annoys or disturbs other reasonable Owners or interferes with their quiet and peaceful enjoyment of the premises; prostitution; or other violation of U.C.A., Section 78-38-9 (1999) as amended or supplemented.

e. Pets of any kind being brought to or kept in any Unit other than an approved aquarium for legally owned aquatic plants and animals.

f. Smoking shall not be permitted inside or anywhere on the property within 40 feet of the front entry to any of the units. The Management Committee may establish a smoking-permitted area on the property and further restrictions related to its use.

(3) *Removing Garbage, Dust and Debris.* Each Unit Owner shall be responsible to see that all rubbish, trash, refuse, waste, dust, debris and garbage is deposited in sealed plastic bags into authorized trash receptacles regularly, not being allowed to accumulate in or around any Unit so as to create a sanitation, health or safety hazard.

(4) *No Severance.* The elements of a Unit and other rights appurtenant to the ownership of a Unit, including interest in Common Areas and Facilities and Limited Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances. Any conveyance made in contravention of this Subsection, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

(5) *Firearms, Incendiary Devices and Graffiti.* The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semiautomatic weapons, BB guns, metal, plastic or paint pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(6) *Temporary Structures.* No Owner or occupant shall place upon any part of the Project any temporary structures, including but not limited to storage units, tents, trailers and sheds or their equivalent, without the prior written consent of the Committee.

(7) *Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections.* All property located at or near common drives, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects placed in violation of this subsection and shall not be guilty of a trespass.

(8) *Storage and Parking of Vehicles.* The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

- a. As each unit is sold or leased, parking slots will be assigned to that unit from those which have not already been assigned for use by other units. Additional parking rules and regulations may be adopted by the Declarant or Committee from time to time, including specific unit designation of parking spaces. Parking slots assigned to a particular unit or units as part of a lease or sale may be visibly marked and reserved by the subject unit(s) in a manner approved by the Management Committee and may not be used, sold or leased by other units or owners while under contract.
- b. Without express permission from the Management Committee, the parking areas are not designed for use to store private property including, but not limited to, recreational vehicles, boats, trailers or autos in disrepair or for sale.
- c. No vehicle or trailer may be parked or stationed in such a manner so as to create potentially dangerous situation.
- d. Except for purposes of loading and unloading, no motor vehicle or trailer may be parked or stationed in such a manner so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Unit, or in an unauthorized Common Areas.
- e. Owners may only park their motor vehicles within their designated and assigned parking spaces or in other designated Common Areas used for general parking.
- f. Owners may not park their motor vehicles in red zones, fire lanes, designated guest or visitor parking, or other unauthorized areas.
- g. Visitors, clients or guests shall park their motor vehicles either in Common Areas designated for such parking or in designated guest or

visitor parking spaces.

h. No Owners or Owners shall repair or restore any vehicle of any kind in, on or about any Unit or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility.

i. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Unit, parking space, entrance, exit, or parking area. Unless expressly permitted by the Management Committee, all parking areas shall be used solely for the parking and storage of motor vehicles used for personal or business transportation.

(9) *Window Treatments.* No-aluminum foil, newspapers, reflective film coatings, or any similar or non-neutral colored materials may be used to shade the exterior Windows of a Unit or any entry or front window visible to other Units. Sun shades are not allowed on the exterior of any building, unless the color, style, construction material and uniformity of appearance is approved by the Management Committee.

(10) *Windows.* All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction throughout;

(11) *Insurance Compliance.* Nothing shall be done or kept in, on or about any Unit or in the Common Areas or limited Common Areas which may result in, the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Management Committee, but for such activity, would pay.

(12) *Laws.* Nothing shall be done or kept in, on or about any Unit or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(13) *Damage or Waste.* No damage to, or waste of, the Common Areas or Limited common Areas shall be committed by any Owner or Owner, their guests or invitees; and each Owner and Owner shall indemnify and hold the Management Committee and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that owner or Owner, their guests, clients or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

(14) *Structural Alterations.* Except in the case of an emergency repair, no structural alteration, plumbing, electrical or similar work within the Common

Areas or Limited Common Areas shall be done or permitted by any Owner without the prior written consent of the Management Committee.

(15) *Unit Maintenance.* Each Owner shall at his own cost and expense maintain, repair, paint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors and windows and doors forming the boundaries of his Unit and all walls, ceilings, colors, windows and doors within such boundaries. In addition to keeping the interior of a Unit in good repair and in a clean and sanitary condition, the Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator or other appliance or fixture connected with a specific Unit.

(16) *Limited Common Area Maintenance.* Each Owner shall keep any Limited Common Area associated or designated for use by that Owner in a clean, sanitary and attractive condition at all times. The Management Committee shall have the power and duty to enforce this provision, and to levy fines for non-compliance.

(17) *Signage.* During the Declarant Period all signs must be approved by Declarant and the Management Committee. Following the Declarant Period, all signs must be approved by the Management Committee in writing prior to beginning installation. Drawings presented for approval must include a reasonable representation of proposed sign dimensions, shape, colors, content and style, as well as a detailed description of materials and construction and mounting methodology. Any requirements (design, electrical, placement, etc.) imposed by the City must be satisfied, and permits must be issued prior to beginning installation. The Management Committee may promulgate further rules and guidelines from time to time regarding signage. The Committee may reject any proposal or request for good faith reasons including but not limited to visual or structural consistency, aesthetic quality, social decency. Any change of signage necessitated by change of ownership or use or business shall impose upon the unit owner or leasing party a responsibility to remove the old sign and restore the building exterior and interior to its previous condition.

9. **Leases.** Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Management Committee upon request. By virtue of taking possession of a Unit, each lessee agrees, to be subject to and abide by these restrictive covenants, and that any covenant violation shall be deemed to constitute a default under the lease. Daily or weekly rentals are prohibited. No Owner may lease separate sections of a Unit to separate persons or less than his entire Unit without the express written consent of the Management Committee. Within ten (10) days after delivery of written notice of the creation of a nuisance or material violation of these restrictive covenants, the Owner shall proceed promptly to abate the nuisance or cure the default, and notify the Management Committee in writing of his intentions. Other than as stated in this Section, there is no restriction on the right of any

Owner to lease or otherwise grant occupancy rights to a Unit.

10. Easements—Support, Maintenance and Repair. There is hereby RESERVED to the City and the Association, and the City and the Association are hereby GRANTED a nonexclusive easement over, across, through, above and under the Units and the Common Areas and Limited Common Areas for the operation, maintenance, and repair of the Common Areas and Facilities, and regulation of Design Guidelines. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same, shall and does exist. If any Unit or part of a Unit encroaches upon the Common Areas, or upon an adjoining Unit or Units, due to original construction, error in plans or original construction, settling, raising or shifting of earth or necessary improvements approved by the HOA, an easement for such encroachment does not and shall exist. Such encroachments shall not be considered encumbrances.

11. Liability of Owners, and Owners For Damages and Waste. Each Owner or Owner shall be liable to the Association, or other Owners or Owners, for damages to person or property and waste in the Community caused by his negligence.

12. Management Committee. The Association shall be managed by a Management Committee consisting of not less than 3 members and not more than 5. Members shall serve for a period of 2 years once appointed, except that any member of the committee may be removed by a majority vote of owners at any time, and a member may be appointed in the same manner.

13. Officers and Agents. The Management Committee, by majority vote, shall elect and/or appoint officers and agents of the Association, including without limitation a President, Secretary, and Treasurer.

14. Management Committee Meetings. The Management Committee shall meet at regular intervals and at least once annually with Members. Minutes of the annual meeting and any meeting called by members shall be made available to members on request.

15. Status and General Authority of Management Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such 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. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (m) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

- a) Access. The right, power and authority to have access to each Unit: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities; or (2) for making emergency repairs necessary to

prevent damage to the Common Areas and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry. *Damage to the interior of any Unit resulting from maintenance, repair, emergency repair, etc. of any Common Area or as a result of emergency repairs within another Unit at the instance of the Committee, shall be an expense of all the Unit Owners and assessed proportionately; provided that if such damages is the result of negligence of the Owner of the Unit, or family or guests or invitees, then such Owner shall be financially responsible for all such damage.*

b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.

d) Standing. The power to sue and be sued.

e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property (other than owned units), so long as it has been approved by at least eighty-three percent (83%) of the Association Members.

g) Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least eighty-three percent (83%) percent of the Association Members.

h) Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least eighty-three percent (83%) of the Association Members.

i) Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by at least eighty-three percent (83%) of the Association Members.

j) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the Act and this Declaration.

k) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Owners not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

l) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional manager, reserving the right, power and authority, however, to control and over see the administration thereof.

m) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably, necessary for the Management Committee to perform its functions on behalf the Owners.

16. Delegation of Management Responsibilities: The Management Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause on thirty (30) days notice.

17. Owners Meeting. The Association shall meet at least annually.

18. Lists of Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Management Committee shall maintain up to date lists of the name, address and phone number of all Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Owners, Mortgagees, Insurers and Guarantors have a duty to provide this information to the Committee.

19. Capital Improvements. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

a) Committee Discretion/Expenditure Limit. Any capital improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Management Committee alone (the "Capital Improvement Ceiling").

b) Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided

ownership interests.

c) Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least eighty-three percent (83%)percent of the ownership interests.

20. Operation, Maintenance and Alterations. Each Unit, the Limited Common Area, Common Area shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

a) Clean, Safe, Sanitary and Attractive Condition. The Units and Common Area shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition, consistent with Community Standards.

b) Landscaping. Any landscaping in or around the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with Community Standards. Specific written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, cover of shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project.

c) Area of Common Responsibility. Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Area and Facilities within or serving the Project, including by way of illustration but not limitation common landscaping and parking lot.

d) Area of Personal Responsibility. Each Owner shall maintain, repair and replace, his Unit, including without limitation all individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door systems subject to the approval of the Management Committee as to construction materials, quality of construction and installation. Each Unit Owner shall also be responsible for maintaining and keeping his Unit and Limited Common Area clean, attractive, tidy, uncluttered, safe, sanitary and functional condition, so as not to detract from the health, safety or uniform appearance or design of the Project, and in a manner consistent with Community Standards, and to repair the plumbing fixtures and lateral pipes servicing only his Unit, including any damage caused thereby and not covered by insurance.

e) Default Provisions. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge

properly his obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the association, or Management Committee may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting of responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Unit Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Unit Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses as may be defined by statute.

f) Alterations to the Common Area. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without additional approval required including without limitation the consent of the Management Committee or Members of the Association; provided, however, no Owner or Owner may make any structural alterations to the Common Area without the express prior written consent of the Management Committee.

g) Certain Work Prohibited. No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement without in every such case the unanimous written consent of all the other Unit Owners being first had and obtained.

21. **Common Expenses.** Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

a) Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Units are sold or, rented; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs.

b) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose: of operating the Project, promoting the utility health, safety, welfare, common benefit of the owners, including the maintenance of any real and personal property owned by the Association, and regulating the project, all as may be more specifically authorized from time to time by the Committee.

c) Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Management Committee from time to time, each Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Committee.

d) Budget. At least thirty (30) days prior to the Annual Owners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

(1) *Itemization*. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(2) *Basis*. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, any common lighting and water charges, trash collection, sewer service charges, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

e) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally to the Unit Owners.

f) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least 83% of ownership interests.

g) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

h) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Unit; (2) the owner of record in the offices of the County Recorder of Utah County, Utah; and (3) both the Buyer and Seller under any

executory sales contract or other similar instrument.

i) Equitable Changes. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Common Area Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

j) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

k) Reserve Account. The Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.

l) Analysis Report. The Management Committee shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

m) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Area Assessment for delinquent Owners. If, however, the Common Area Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the committee, at its option and in its sole discretion, may elect to decelerate the obligation.

n) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

o) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Unit hereby waives.

p) Suspension of Right to Use Amenities for Non-Payment. At the discretion of the Management Committee, the right to use any amenities in the Project may be suspended for up to ninety (90) days if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

q) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended for up to ninety (90) days if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

22. Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

a) Committee Based Assessment. So long as the special assessment does not exceed the sum of Five hundred and 00/100th Dollars (\$500.00) per Unit in any one fiscal year (the "Special Assessment Limit"), the Committee may impose the special assessment without any additional approval.

b) Association Approval. Any special assessment which would exceed the Special Assessment limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

23. Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

a) Benefit only To Specific Unit. If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

b) Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association of the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

24. Individual Assessments. Individual Assessments shall be levied by the Committee against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Committee in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible; (c) any other fine, charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

25. Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

a) Delinquent Assessments. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Unit, regardless of whether a written notice is recorded.

b) Late Fees and Accruing Interest. A late fee of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on all tardy payments. Default interest at the rate of one percent (1.0%) per month or twelve percent (12%) per annum shall accrue on all delinquent accounts.

c) Lien. If any Unit Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, or any reimbursement for damages or repair assessed by the Committee to that Owner, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

d) Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

e) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Unit.

g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant

on the part of each Owner.

h) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments then Current Assessments.

i) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

j) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he/she is a member of the Utah state Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

k) Attorney in Fact. Each Owner by accepting a deed to a Unit hereby irrevocably appoints the association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is delinquent in his assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

26. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to

others on account of any such contract or commitment. Any right to indemnification provided for herein shall, be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

27. Insurance. The Manager, Management Committee or Association will obtain insurance as is deemed advisable and as may be required against loss or damage by fire and other hazards for: (a) all Common Elements and Facilities; and (b) any buildings that contain more than one Unit, including any improvement which is a permanent part of a Building. The insurance coverage shall be written in the property in the name of the Manager, Management Committee or Association, as trustee for each of the Unit Owners in the percentages established in this Declaration. The insurance premiums shall be a Common expense. This section is without prejudice to the right of each Unit Owner to insure his own Unit for his benefit. The Manager, Management Committee or Association shall satisfy at least the following minimum requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in a standard commercial casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion

b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area which is designated as A, AE, AH, AO, AI-30, A-99, V, VE, or VI-30 on a Flood Insurance Rate Map (FIRM) the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value if the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

c) Liability Insurance. A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Three Million (\$3,000,000) Dollar general aggregate, and a Three Million (\$3,000,000) Dollar products and completed operations aggregate and a One Million Dollar personal and advertising minimum. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

d) Directors and Officers Insurance; If applicable, a director's and officer's liability or

d) Directors and Officers Insurance; If applicable, a director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

e) Earthquake Insurance shall not be required unless requested by at least eighty-three percent (83%) of the Members of the Association.

f) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) *The Insured*. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows:
"Association of Unit Owners for The WHITE, INC. LOT 1
CONDOMINIUMS, for the use and benefit of he individual Owners."

(2) *Beneficiary*. In any policy covering the entire Project, each owner and his Mortgagee, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(3) *Certificate of Insurance*. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(4) *Mortgage Provisions*. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(5) *Miscellaneous Provisions*. Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect or any individual Owner.

(6) *Prompt Repair*. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(7) *Disbursement of Proceeds*. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

(8) *Special Endorsements*. Each policy shall also contain or provide those

first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building zoning or land-use law would result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(9) *Restrictions on Policies.* No insurance policy shall be maintained where:

a. Individual Assessments Prohibited. Under the terms of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

b. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(10) *Intent.* The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

(11) *Deductible.* The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

g) Adjusting Claims. The Management Committee has the authority to adjust claims

and, if the claim may be filed with the Unit Owner's or renter's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company, particularly if (1) it risks cancellation of the Association's insurance, or (2) the problem occurred in the Unit, or (3) was caused by the claimant, or (4) the claim is legally or primarily the responsibility of the claimant, and (5) there is a substantial likelihood that the claim will be covered by the Owner's or renter's insurance company. The Management Committee may also elect to self-insure any claim and in such an instance the person legally responsible for the loss or maintenance shall pay the deductible.

28. Destruction, Condemnation and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "*Substantial Destruction*" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimate cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(2) "*Partial Destruction*" shall mean any other damage or destruction to the Project or any part thereof.

(3) "*Substantial Condemnation*" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

(4) "*Partial Condemnation*" Shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(5) "*Substantial Obsolescence*" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(6) "*Partial Obsolescence*" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "*Restored Value*" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "*Estimated Cost of Restoration*" shall mean the estimated costs of restoring the Project to its former condition.

(9) “*Available Funds*” shall mean any proceeds of insurance; condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion or any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grantor conveyance in lieu thereof; the Committee shall make a Determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51 %) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

- f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with articles above to pay for the deficiency.
- g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.
- h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, Condominium Ownership under this Declaration and the Condominium Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.
- j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.
- k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.
- l) Right of Entry. Such authority shall include the right and power to enter the premises as reasonably necessary with reasonable advance notice, as well as the right to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.
- m) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Unit Owners who represent at least eighty-three percent (83%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least eighty-three percent (83%) percent of the votes of the mortgaged Units.

29. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

- a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and
- b) Change In Ownership. Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and
- c) Notice. If approved, written notice of the approval must be given to all Unit Owners at least ten (10) days before any action is required by them.

30. Mortgagee Protection: Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Unit in foreclosure. The lien or claim against a Unit for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

- a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.
- b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantor of any Mortgage current copies of the Declaration, By-Law, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have right to recover its photocopying and service charges

incurred in making the inspection and photocopying available.

c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year! Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d) Management. Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

(1) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

(2) No contract may be for an initial term greater than one (1) year.

e) Eligible. Mortgagee. Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder; insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) *Condemnation Loss or Award.* Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) *Delinquency.* Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency, remains uncured for a period of sixty days.

(3) *Lapse of Insurance.* Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(4) *Consent Required.* Any proposed action which would require that consent of a specified percentage of Eligible Mortgagees.

f) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

31. **Amendment.** This Declaration may be amended as follows:

a) Amendments by Declarant. Until after the termination of the Declarant's Period of Control, this document and the Condominium Plat may be unilaterally amended by the execution by Declarant of an instrument amending the same without any additional approval required, and no other amendment shall be valid or enforceable without the Declarant's prior written consent. Declarant expressly reserves the right to change in the first and/or all future phases the definition of Common Area and/or Unit, and their designation on the Plat, in order to expand the definition of a Unit to include the roof, exterior walls, footings and foundations, etc., provided the maintenance, repair and replacement of such items remain part of the Area of Common Responsibility and the Project is developed in accordance with the approved development plan of the City's planning commission.

b) Consent of the Owners. After the termination of the Declarant's Period of Control, the affirmative vote of at least sixty-six percent (66%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Condominium Plat. Provided, however the modification of any provision expressly and specifically affecting the Office Units shall require the unanimous consent of all Office Unit Owners. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for, amendment has, occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

c) Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired development right, or Period of Declarant Control unless the Declarant approves or consents in writing.

d) Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Utah County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the Owner and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and, when the amendment has been recorded in the office of the County Recorder of Utah County, Utah.

e) Consent of Eligible Mortgagee to Terminate Legal Status of Project. The consent of at least 83 percent (83%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project.

f) Consent of Eligible Mortgagees to Add or Amend Any Material Provision. The consent of Eligible Mortgagees holding at least sixty-six (66 %) percent of the undivided ownership interest in the Common Areas shall be required to add to or

amend any material provision of this Declaration or the Condominium Plat which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for, maintenance, repair, and replacement of Common Areas, Facilities and Elements;
- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area and general or limited common elements, or rights to their use;
- Redefinition of any Unit boundaries;
- Convertibility of Units into Common Area or Elements, or vice versa;
- Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Units;
- Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- A decision by the Association (if the Project consists of more than 50 Units) to establish self-management if professional management had been required previously by the Project Documents, or by an Eligible Mortgage holder;
- Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this paragraph if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Condominium Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Condominium Plat or the termination of the legal status of the Project. If such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

32. Due Process Requirements; Notice of Hearing; opportunity to be Heard. In the event of a claimed violation of the Project Documents or the Act, no citation or suspension shall be imposed without the Management Committee first giving the alleged violator written notice of the violation and an opportunity to be heard by the Committee. Provided, however, nothing herein shall be construed to prevent the Management Committee from (a) immobilizing, towing or impounding a motor vehicle in violation of the parking

rules and regulations for which no additional notice is required, or (b) making and emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice to the Unit Owner or Owner and giving them an opportunity to be heard.

33. Declarant's Sales Program. Anything to the contrary notwithstanding, until Declarant has sold all Units owned by it, or the expiration of seven (7) years following the date on which the Declaration is filed for record in the Office of the Utah County Recorder, whichever first occurs, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay his portion of the Common Expenses or other Assessments, except as herein otherwise provided. Neither the Owners, the Association, nor the Management Committee shall interfere with the completion of improvements and sale of Declarant's Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

a) Sales Office. Declarant shall have the right to maintain one (1) sales office. Such office may be one or more of the units owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c) Common Area use. Declarant shall have the right to use the Common Areas of the Project as a sales office and in any other way necessary to facilitate sales.

d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate its sales office or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Event, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

e) Restrictions in Favor of the Declarant. The facilities at the Project may not be subject to any restriction or reservation in favor of the Declarant or any of its affiliates.

34. Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

a) Units. Each Unit which an Owner has contracted to purchase, the Building within which such Units is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and

b) Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor light and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use.

35. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

36. Mortgagee Approval. Declarant may annex additional properties or amend the Declaration without further vote or approval during the period of Declarant's control.

37. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant may make or add enforceable supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration;

38. Enforcement and Right to Recover Attorneys Fees. Should the Association or Committee be required to take action to enforce the Declaration, By-Laws or any administrative rules or regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

39. Agent for Service of Process. The Owner of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial registered Agent is Sam White and the initial office of the Registered Agent is 682 E. Healey Blvd., Alpine, UT 84004.

40. Combination of Units. An Owner of two or more adjoining units shall have the right upon approval of the management committee and the mortgagees of said units, to combine one or more adjoining units or portions thereof and to alter or amend the declaration and map to reflect such combination.

a) Such amendments may be accomplished by the unit owner recording an amendment

or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

b) All such amendments to the declaration and map must be approved by attorneys employed by the management committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

c) Any amendment of the declaration or map pursuant to this paragraph shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the common areas and facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the units that are combined as set forth in Exhibit hereto. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the combination on the basis of area remaining in the respective, combined units. The percentage of undivided interest in the common areas and facilities appurtenant of all other units shall not be changed. All such amendments must, in all instances, be consented to by the management committee and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid providing the percentages of undivided interest in the common areas and facilities of the other unit owners remain unchanged.

41. Fines. Each Owner is responsible for adhering to the Project Documents governing the Project. A breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her Owners, tenants, clients and/or guests. Fines levied against Owners, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

a) Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

b) Before assessing a fine under Subsection (a), the Management Committee shall give notice to the homeowner of the violation and inform the owner that the fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or rules, which shall be at least forty-eight (48) hours.

c) A fine assessed under Subsection (a) shall:

- (1) be made only for a violation of a restrictive covenant, rule or regulation;
- (2) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500.00; and
- (3) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

d) Cumulative fines for a continuing violation may not exceed \$500.00 per month.

e) An Owner who is assessed a fine under Subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

f) An Owner may appeal a fine issued under Subsection (a) by initiating a civil action within one hundred and eighty (180) days after: (1) A hearing has been held and a final decision has been rendered by the management committee under Subsection (e); or (2) The time to request an informal hearing under Subsection (e) has expired without Owner making such a request.

g) A fine assessed under Subsection (a) which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 26(c) above.

42. Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

a) If an owner fails or refuses to pay any assessment when due, the management committee may (1) terminate the owner's right to receive utility services paid as a common expense; and (2) terminate the owner's right of access and use of recreational facilities, after giving notice and an opportunity to be heard.

b) Before terminating utility services right of access and use of recreational facilities, the manager or management committee shall give written notice to the owner in the manner provided in the declaration, bylaws, or association rules. The notice shall state:

- (1) Utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

(2) the amount of the assessment due, including any interest or late payment fee; and

(3) the right to request a hearing.

c) An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered, by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association

d) The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules.

e) If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

f) Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility services to the unit and right to use of recreational facilities.

43. Assignment of Rents.

a) If: the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or management committee must give the owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(1) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

(2) state the amount of the assessment due, including any interest or late payment fee;

(3) state that any costs of collection, not to exceed \$250, and other assessments that become due may be added to the total amount due; and

(4) provide the requirements and rights described herein.

b) If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(1) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the management committee's intent to collect all lease payments due to the association pursuant hereto.

(2) that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(3) payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection {6) suit or other action may not be initiated by the owner against the tenant for failure to pay.

c) All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the association.


d) Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or management committee must notify the tenant in writing that. Future lease payments are no longer due to the association. A copy of this notification must be mailed to the owner.

e) As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a unit by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

44. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Condominium Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah,

Dated this 13 day of August, 2009.

SRW-1, LLC
A Utah Liability Company


Signature:


By: Sam White
President, SRW-1, LLC

STATE OF UTAH

:SS

COUNTY OF UTAH

On the 13th day of August, 2009, personally appeared before me Sam White, who by me being duly sworn, did say that he is the president of SRW-1, LLC, a Utah Limited Liability Company and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Incorporation and/or a resolution of its Members, and said Same White duly acknowledged to me that he executed the same on behalf of, and with intent to bind said Company.

 Notary Public
ANGIE WINCH
1990 Spring Street
Eagle Mountain, Utah 84005
My Commission Expires
October 10, 2010
STATE OF UTAH

Angie Winch
NOTARY PUBLIC

**LEGAL DESCRIPTION OF TRACT
EXHIBIT "A"**

WHITE, INC. LOT 1 CONDOMINIUMS

BEGINNING AT A POINT BEING S 00-09'12" E 930.81 FEET ALONG THE SECTION LINE AND WEST 649.52 FEET FROM THE EAST QUARTER CORNER OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN;

RUNNING THENCE S 02-03'28" W 204.86 FEET; THENCE S 31-24'57" W 78.81 FEET; THENCE N 89-31'41" W 428.55 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 11.97 FEET (CURVE HAS A CENTRAL ANGLE OF 45-43'14" AND A CHORD THAT BEARS N 66-44'04" W 11.65 FEET); THENCE N 00-28'19" E 267.85 FEET; THENCE S 89-31'41" E 485.49 FEET TO THE POINT OF BEGINNING

CONTAINS 2.98 ACRES

BASIS OF BEARING: STATE PLANE COORDINATES (NAD27)

OWNERSHIP INTEREST and UNITS
EXHIBIT "B"

Ownership interest shall be calculated as follows:

1. Ownership per unit is equal
2. Each unit shall constitute 16.6% ownership of available voting rights (100% divided by 6 units)

PROPOSED BYLAWS OF OWNERS ASSOCIATION
EXHIBIT "C"

WHITE INC. LOT 1 OWNERS ASSOCIATION
Bylaws

Article I. Name & Location

The name of the Corporation is **WHITE INC. LOT 1 OWNERS ASSOCIATION** (hereinafter referred to as the "Corporation" or the "Association").

The principal office of the Corporation shall be located at White, Inc. Subdivision. However for mailing purposes, the initial mailing address shall be: 682 E. Healey Blvd., Alpine, UT 84004

Meetings of the members and directors may be held at such places within Utah County, Utah, as may be designated by the Board of Directors.

Article II. Definitions

- A. "Association" shall mean the Corporation, **WHITE INC. LOT 1 OWNERS ASSOCIATION**, its successors and assigns and the governing body thereto.
- B. "Properties" shall mean that certain real property described in the *Declaration of Covenants, Conditions, & Restrictions*.
- C. "Common Area" shall mean all real property (including the improvement thereto) owned by the Association for the common use and enjoyment of the Owners.
- D. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Unit which is part of the Properties, including contract sellers, but excluding those having an interest in a Unit merely as security for the performance of an obligation.
- E. "Declarant" shall mean and refer to SRW-1, LLC, its successors and assigns.
- F. "Declaration" shall mean the *Declaration of Covenants, Conditions, & Restrictions* applicable to the Properties recorded in the Official Records of Utah County, UT.
- G. "Member" shall mean owners, i.e., those persons entitled to membership as provided in the *Declaration*.
- H. "Unit" shall mean and refer to any of the separate divided or partitioned units shown on the approved plat and the physically enclosed space upon it together with the undivided interest in the common areas and facilities appertaining to that unit.
- I. "Limited Common Areas" shall mean and refer to those Common Areas designated in the Declaration and shown on the Plat Map reserved for use of a certain Unit or Units to the exclusion of other Units.
- J. "Management Committee" shall mean and refer to the committee as appointed by the Association, charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

- K. "Assessment" (a.k.a. "dues") shall mean the anticipated amount that is to be levied and assessed against each Unit and paid by each Owner to the Association for Association expenses.
- L. "Special Assessment" shall mean any unanticipated assessment authorized to defray cost of capital improvements upon the Common Area, also other fees and fines applied by the Association.
- M. "Development" shall mean the Development known as White, Inc. Subdivision as it exists at any given time.

Article III. Meeting of Members

- A. Annual Meeting. The first annual meeting of the Members shall be held within one year (1 yr.) from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on or about the same day of the same month of each year thereafter. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.
- B. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote 25% of all of the votes.
- C. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 10 days but not more than 50 days before such meeting to each member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.
- D. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast (or of absentee votes previously cast) 25% of the votes shall constitute a quorum for any action except as otherwise provided in the *Articles of Incorporation*, the *Declaration*, or these *Bylaws*. If, however such quorum shall not be present or represented at any meeting, the Members entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented.
- E. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.
- F. Absentee Voting. Prior to all meetings of members, each member or their proxies may vote an absentee at such place and for such duration of voting period as the Board of Directors shall so establish. Voting materials and security thereof shall be the responsibility of the Board of Directors or a committee delegated to such responsibilities by the Board of Directors.

Article IV. Board of Directors, Selection, Term of Office

- A. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who must be Members in good standing of the Association. The number of Directors may be increased to five (5) by decision of the then-current Board; otherwise, the number of the Directors may be increased above five (5) by amendment of the *Bylaws* of the Association.
- B. Term of Office. At the first annual meeting, the Members shall elect one (1) director for a term of one year (1 yr.), one (1) director for a term of two years (2yrs.), and one (1) director for a term of three years (3 yrs.); and at each annual meeting thereafter, the Members shall elect one (1) director for a term of three years (3 yrs.).
- C. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the even of death, resignation, or removal of a director, his successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of his predecessor.
- D. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.
- E. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting that they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.
- F. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, or any committee of the Board.

Article V. Nomination & Election of Directors

- A. Nomination. Nomination for election to the Board of Directors shall be made by a *Nominating Committee*. Nominations may also be made from the floor at the annual meeting. The *Nominating Committee* shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The *Nominating Committee* shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The *Nominating Committee* shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.
- B. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies or absentee ballots may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the

provisions of the *Declaration*. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Article VI. Meetings of Directors

- A. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. The Board and/or any committee may hold a meeting by telephone conference-call procedures in which all persons participating can hear each other.
- B. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.
- C. Quorum. A majority of the number of directors shall constitute a *quorum* for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a *quorum* is present shall be regarded as the act of the Board.

Article VII. Powers and Duties of the Board of Directors

- A. Powers. The Board of Directors shall have power to:
1. Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
 2. Suspend the voting rights and the right to use recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the *Declaration* or by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
 3. Exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these *Bylaws*, the *Articles of Incorporation*, or the *Declaration*
 4. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
 5. Employ a manager, an independent contractor, or such other employees, professionals (such as attorneys and accountants), service providers, and other persons as they deem necessary, and to prescribe their duties.
- B. Duties. It shall be the duty of the Board of Directors to:
1. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the

- Members, or at any special meeting when such statement is requested in writing by 25% of the Members who are entitled to vote;
2. Supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
 3. As more fully provided in the *Declaration*, to:
 - a. Fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
 - b. Send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - c. Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
 4. Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these Certificates. If a certificate states an assessment has been paid, such certificated shall be conclusive evidence of such payment.
 5. Procure and maintain adequate liability and hazard insurance on property owned by the Association;
 6. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
 7. Cause the Common Area, and recreational and other facilities, to be maintained; and
 8. Cause all real and personal property owned by the Association to be maintained.

Article VIII. Officers & Their Duties

- A. Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.
- B. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.
- C. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one year (1yr.), unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.
- D. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
- E. Resignation & Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving notice to

the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice, or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

F. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

G. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to these bylaws.

H. Duties. The duties of the officers are as follows:

1. President: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments, and shall co-sign all checks and promissory notes.
2. Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
3. Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses, and shall perform such other duties as required by the Board.
4. Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

Article IX. Committees

When the need presents itself, the Association may appoint an Architectural Control Committee, as provided in the *Declaration*, a Nominating Committee, as provided in these *Bylaws*, and a Management Committee. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

Article X. Books & Records

The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The *Declaration*, the *Articles of Incorporation*, and the *Bylaws* of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Article XI. Assessments

As more fully provided in the *Declaration*, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12.0%) *per annum*, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. No owner may vote when he/she is not current on assessments or when he/she has not paid attorney fees or costs incurred is provided above.

Article XII. Corporate Seal

The Association may, but is not required to have, a seal in a circular form having within its circumference the words: WHITE INC. LOT 1 OWNERS ASSOCIATION Corporate Seal.

Article XIII. Amendments.


- A. These *Bylaws* may be amended at a regular or special meeting of the Members by a vote of a majority of a quorum of Members present in person or by proxy or by absentee ballot.
- B. In the case of any conflict between the *Articles of Incorporation* and these *Bylaws*, the *Articles* shall control; and in the case of any conflict between the *Declaration* and these *Bylaws*, the *Declaration* shall control.

Article XIV. Miscellaneous

The fiscal year of the Association shall begin on the first day of January and end of the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF the undersigned, constituting all of the present Trustees of the White, Inc. Subdivision Owners Association, have executed these Bylaws on the 7th day of August, 2009.

SRW-1, LLC


By: Sam White, as Manager of SRW-1, LLC



**ARTICLES OF INCORPORATION FOR
WHITE INC. LOT 1 OWNERS ASSOCIATION
EXHIBIT "D"**

RECEIVED

AUG 10 2009

Utah State Tax Commission
150 East Center
Provo, Utah 84606**ARTICLES OF INCORPORATION FOR
WHITE INC. LOT 1 OWNERS ASSOCIATION**

The undersigned, a owner of the State of Utah, hereby adopts the following Articles of Incorporation for the purpose of forming a corporation not for profit, and does hereby certify:

Article I. Name

The name of the Corporation is WHITE INC. LOT 1 OWNERS ASSOCIATION (hereafter called the "Association").

Article II. Principal Office

The principal office of the Corporation shall be located at White, Inc. Lot 1 Subdivision. For mailing purposes, the initial mailing address shall be: 682 E. Healey Blvd., Alpine, UT 84004.

Article III. Registered Agent

Sam White is hereby appointed the initial Registered Agent and Registered Officer of this Association, whose address is: 682 E. Healey Blvd., Alpine, UT 84004.

Acceptance of appointment as Registered Agent:



Sam White

Article IV. Purpose & Powers of the Association

This Association does not contemplate pecuniary gain or profit to the members thereof, and the general purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the commercial Units and Common Area within that certain tract of real property described in the approved condominium plat, but also described as:

BEGINNING AT A POINT BEING S 00-09'12" E 930.81 FEET ALONG THE SECTION LINE AND WEST 649.52 FEET FROM THE EAST QUARTER CORNER OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN;

RUNNING THENCE S 02-03'28" W 204.86 FEET; THENCE S 31-24'57" W 78.81 FEET; THENCE N 89-31'41" W 428.55 FEET; THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 11.97 FEET (CURVE HAS A CENTRAL ANGLE OF 45-43'14" AND A CHORD THAT BEARS N 66-44'04" W

11.65 FEET); THENCE N 00-28' 19" E 267.85 FEET; THENCE S 89-31' 41" E 485.49 FEET TO THE POINT OF BEGINNING

CONTAINS 22.98 ACRES

BASIS OF BEARING: STATE PLANE COORDINATES (NAD27)

(the "Property" herein); and to promote the health, safety, and welfare of the owners within the PUD, and any additions thereto as may hereafter be brought within the jurisdiction of this Association.

For these purposes, the Association may:

- A. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain *Declaration of Covenants, Conditions, & Restrictions* (hereinafter called the "*Declaration*") applicable to the Property and recorded or to be recorded in the Official Records of Utah County, Utah, as they may be amended from time to time; and
- B. Enforce applicable provisions of the *Declaration, Bylaws, and Rules & Regulations* of the Association; and
- C. Fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the *Declaration*; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including licenses, taxes, or governmental charges levied or imposed against the Property of the Association; and
- D. Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association; and
- E. Borrow money, and, with the assent of 66% of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- F. Participate in mergers and consolidations with other non-profit corporations organized for the same purposes, or annex additional property and Common Area, provided that any such merger, consolidation, or annexation shall have the assent of 66% of each class or members; and
- G. Have and to exercise any and all powers, rights, and privileges which a corporation organized under the *Non-Profit Corporation Law* of the State of Utah by law may now or hereafter have or exercise.

Article V. Membership

Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who shall hold an interest merely as security for the performance of an obligation. Membership is appurtenant to and may not be separated from ownership of any Unit that

is subject to assessment by the Association.

Article VI. Rights

The Association shall have one (1) class of voting membership:

All Owners with the exception of the Declarant shall be entitled to one vote per unit owned. When more than one person holds an interest in any Unit, all such persons shall be members; the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

Until the Declarant period expires, Declarant (as defined in the Declaration), shall be entitled to two (2) votes for each Unit owned.

Article VII. Board of Directors

The affairs of this Association shall be managed by a Board of at least three (3) Directors, who must be members of the Association. The number of directors may be increased to five (5) by decision of the then-current Board. The name and address of the person who will act in the capacity of initial director until the selection of additional or successor members is:

<u>Name</u>	<u>Address</u>
Sam White	682 E. Healey Blvd., Alpine, UT 84004

At the first annual meeting, held within one year from the date of incorporation of the Association, if three or more Units have been sold, the members shall elect one (1) director for a term of one year (1 yr.), one director for a term of two years (2 yrs.), and one (1) director for a term of tree years (3 yrs.); and at each annual meeting thereafter, the member shall elect a director for a term of three years (3 yrs.). Declarant shall remain on the board until the Declarant period ends, holding one of the available positions.

Article VIII. Dissolution

The Association may be dissolved with the assent given in writing and signed by not less than 83% of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization to be devoted to such similar purposes.

Article IX. Duration

The Corporation shall exist perpetually.

Article X. Amendments

Amendment of these Articles shall require the assent of 66% of the entire membership.

Article XI. Liabilities

The highest amount of indebtedness or liability, direct, or contingent, to which this Association may be subject at any one time shall not exceed \$100,000.00 unless 100% of members consent; and thereafter shall not exceed 150% of its income for the previous fiscal year. provided that additional amounts may be authorized by a vote of 66% of the entire Membership.

Article XII. Annexation or Additional Properties

- A. The Association may, at any time, annex additional real properties and common areas to the Property provided that any such annexation shall have the assent of 66% of the membership.
- B. If, within five years (5yrs.) of the date of incorporation of this Association, the Declarant should develop additional lands generally adjacent to the property, such additional lands may be annexed to the Property without the assent of the members.

Article XIII. Authority to Mortgage

Any mortgage by the Association of the Common Area defined in the Declaration shall have the assent of 66% of the entire membership.

Article XIV. Authority to Dedicate


The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by members entitled to cast 66% of the votes of the entire membership agreeing to such dedication, sale, or transfer.

Article XV. Meetings

In order to take action, there must be a duly-held meeting. Written notice, setting forth the purpose of the meeting shall be given to all members not less than 30 days nor more than 50 days in advance of the meeting. The presence of members or of proxies entitled to cast 25% of the votes of membership shall constitute a *quorum*. If the required

quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required *quorum* at such subsequent meeting shall be one-half (1/2) of the required *quorum* of the preceding meeting.

7th In witness whereof, I have subscribed the foregoing Articles of Incorporation this day of August, 2009.


Sam White, Incorporator

**ARTICLES OF ORGANIZATION OF SRW-1, LLC.
EXHIBIT "E"**

Date: 04/30/2008
Receipt Number: 2478774
Amount Paid: \$178.00

File No. 6891774

RECEIVED
APR 30 2008
Utah Div. of Corp. & Comm. Code

AMENDED AND RESTATED ARTICLES OF ORGANIZATION OF
SRW-1, LLC

The undersigned person, acting as manager of a limited liability company under the Utah Revised Limited Liability Company Act, adopts the following Amended and Restated Articles of Organization for such limited liability company on the 30th day of March, 2008.

1. Adoption of Amendment. All Members and Managers of the Limited Liability Company agreed to and adopted this Amendment and Restatement on the 30th day of March, 2008.

2. Name of the Limited Liability Company. The name of the limited liability company is:
SRW-1, LLC.

3. Business Purposes For Which the Limited Liability Company is Organized. The purposes for which the limited liability company is organized are:

- a) To enter into any lawful arrangement for sharing profits, union of interest, reciprocal association or cooperative association, partnership, individual or other legal entity for the carrying on of any business and to enter into any general or limited partnership for the carrying on of any business.
- b) To engage in any other lawful business activities for which limited liability companies may be organized pursuant to the Utah Limited Liability Company Act.

4. Registered Office and Registered Agent. The street address of the Limited Liability Company's initial registered office is:

25 South 1800 West
Lindon, Utah 84042

04-30-08P01:56 RCVD

The name and address of the original registered agent is:

Sam White
25 South 1800 West
Lindon, Utah 84042

The Director of the Division of Corporations and Commercial Code of Utah is appointed the agent for the Limited Liability Company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence.

5. Designated Office. The designated office of the limited liability company is:

25 South 1800 West
Lindon, Utah 84042


6. Management of the Limited Liability Company is Reserved to the Manager: The management of the limited liability company is reserved to a Manager. The name and street address of the Manager of the limited liability company is:

Sam White
25 South 1800 West
Lindon, Utah 84042

7. Period of Duration of the Limited Liability Company. The period of duration of the limited liability company shall be ninety-nine (99) years from the date these articles of organization are duly filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce.


Under penalties of perjury, the undersigned does hereby declare that these Amended and Restated Articles of Organization have been examined by him/her and are, to the best of his/her/its knowledge and belief, true, correct, and complete on the 30th day of March, 2008.

Manager:



Sam White

I, Sam White, hereby consent to be the registered agent of Limited Liability Company.



Sam White
Registered Agent