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RANDALL A. COVINGTON  
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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
TIMPANOGOS RESEARCH  
& TECHNOLOGY PARK  
(A PLANNED UNIT DEVELOPMENT)**

**(An Expandable Project)**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
TIMPANOGOS RESEARCH & TECHNOLOGY PARK  
(A PLANNED UNIT DEVELOPMENT)  
(An Expandable Project)**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TIMPANOGOS RESEARCH & TECHNOLOGY PARK (A Planned Unit Development) (the "*Declaration*") is made effective the 17<sup>th</sup> day of October 2006, by the Timpanogos Research & Technology Park Owners Association, Inc., a Utah non-profit corporation (the "*Association*").

**RECITALS**

WHEREAS, Novell, Inc., a Delaware corporation (the "*Declarant*"), was the owner of certain real property situated in the City of Orem, Utah County, State of Utah, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "*Property*");

WHEREAS, Declarant established the Property as a planned unit development known and to be known as Timpanogos Research & Technology Park (A Planned Unit Development);

WHEREAS, the Declarant previously recorded that certain Declaration of Covenants, Conditions and Restrictions for Timpanogos Research & Technology Park (A Planned Unit Development) (the "*2000 Declaration*") with the office of the Utah County Recorder, State of Utah, on April 13, 2000, as Entry No. 29306, in Book 2000, page 1 et seq.;

WHEREAS, there are constructed upon said Property certain Buildings and other improvements. All of such Buildings and improvements are described in the Plat Maps filed for record herewith, prepared and certified by Barry Andreason of RB&G Engineering, Inc., Utah State Registered Land Surveyor, Certificate No. 166572;

WHEREAS, the Association certifies that the vote necessary to amend the 2000 Declaration pursuant to Article 13.2 thereof occurred on or about October 17, 2006, whereby certain changes were made to the 2000 Declaration; and

WHEREAS, to reflect such changes, the President of the Association now desires to amend and fully restate the 2000 Declaration as set forth in this Declaration.

NOW, THEREFORE, the Association hereby declares that the Property is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied, and improved subject to the covenants, conditions, restrictions, uses, limitations, obligations, servitudes, easements, charges, liens, and other provisions hereinafter set forth, all of which are declared and agreed to be for the benefit of the Project; shall protect the value of the Property and the improvements comprising the Project; shall run with and bind the Property and all persons or entities having any right, title, or interest therein, their heirs, successors, and assigns; and shall inure to the benefit of and be enforceable by the Association and any Lot Owner in the Project.

## DECLARATION

### ARTICLE 1. DEFINITIONS

When used in this Declaration (including that portion hereof captioned "RECITALS"), each of the following terms shall have the meaning indicated:

1.1. "**Assessment**" shall mean an assessment levied to offset certain common expenses and/or special expenses as the context so specifies, as set forth in this Declaration.

1.2. "**Association**" shall mean Timpanogos Research & Technology Park Owners Association, Inc., a Utah non-profit corporation, its successors and assigns.

1.3. "**Board**" or "**Board of Trustees**" shall mean the Board of Trustees of the Association.

1.4. "**Building**" or "**Buildings**" shall mean a structure or structures, located on a Lot, which is designated and intended for professional and/or commercial (but not residential) uses as permitted by applicable zoning and other laws, together with all improvements located on the same Lot and used in conjunction with such structure, such as steps, landings, handrails, entrance areas, etc.

1.5. "**Bylaws**" shall mean the Bylaws of the Association, as amended from time to time, attached hereto as Exhibit "D" and incorporated herein by this reference.

1.6. "**Common Areas**" shall mean all portions of the Project except the Lots, and shall include all property under the control and management of the Association for the common use and enjoyment of the Owners, such as all undedicated roads or streets, parking spaces, sidewalks, walkways, landscaped areas, open spaces, and the like, together with all easements appurtenant thereto, whether or not expressly listed herein or on the Plat Maps. The Common Areas also include: (a) those areas specifically set forth and designated as such on the Plat Maps; (b) those areas used in the installation and maintenance of central services such as water, electricity, gas, sewer, communication, fiber optic cables, etc., and all apparatus and installations existing for common use; and (c) those areas within the Project normally used in common with regards to use, maintenance, safety, or management.

1.7. "**Common Expenses**" shall mean and refer to any of the following: (a) the expenses of (or reasonable reserves for, as may be permitted under the terms of this Declaration) the maintenance, management, operation, repair, and replacement of the Common Areas; (b) the expenses of management and administration of the Association, including compensation paid by the Association to a Manager, accountants, attorneys, or other employees or agents; (c) any other item or items designated in this Declaration or the Bylaws of the Association to be Common Expenses; and (d) any other expenses reasonably incurred by the Association on behalf of all Owners.

1.8. "**Declarant**" shall mean Novell, Inc., a Delaware corporation, its successors and assigns.

1.9. **"Declaration"** shall mean this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Timpanogos Research & Technology Park (A Planned Unit Development), as the same may be amended or supplemented.

1.10. **"Lot"** shall mean any designated lot of land within the Project that is improved, or is intended to be improved, with a Building, as more specifically described in the Plat Maps.

1.11. **"Lot L Services"** shall have the meaning ascribed thereto in SECTION 4.15 below.

1.12. **"Lot Owner"** or **"Owner"** shall mean any person(s) or entity(ies) who is/are the owner of record (as reflected in the records in the office of the County Recorder of Utah County, State of Utah) of a fee or undivided fee interest in any Lot and the undivided interest in the Common Areas which is appurtenant thereto, which is a part of the Project, including contract buyers. Notwithstanding any applicable theory relating to Mortgages, no Mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof.

1.13. **"Manager"** shall mean any person or entity appointed or employed as a Manager by the Association in regards to the maintenance, management, operation, and repair of the Common Areas.

1.14. **"Member"** shall mean a member of the Association.

1.15. **"Mortgage"** shall mean any mortgage, deed of trust, or trust deed, or other security instrument by which the Lot or any part thereof is encumbered.

1.16. **"Mortgagee"** shall mean and include any person or entity named as a mortgagee or beneficiary under a recorded Mortgage as defined above.

1.17. **"Officer"** or **"Officers"** shall mean an officer or officers of the Association.

1.18. **"Plat Maps"** shall mean and refer to all Phases of Timpanogos Research & Technology Park (A Planned Unit Development), Orem, Utah, and by reference made a part hereof, as recorded at the Utah County Recorder's Office, State of Utah, as may be amended or supplemented from time to time.

1.19. **"Project"** shall mean Timpanogos Research & Technology Park (A Planned Unit Development), as it may exist at any given time.

1.20. **"Property"** shall mean all land covered by this Declaration, including Common Areas and Lots, and shall consist of the land described in ARTICLE 2 hereof.

1.21. **"Reimbursement Assessment"** shall mean a charge against a particular Owner and its Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner and its Lot into compliance with the provisions of this Declaration, the Bylaws, the Rules and Regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Bylaws, or the Rules and Regulations of the Association,

together with costs, interest, attorneys' fees, and other charges payable by such Owner, pursuant to the provisions of this Declaration.

**1.22. "Rules and Regulations"** shall mean the rules, regulations, and procedures governing the operation and use of the Common Areas; architectural standards, guidelines, rules, and procedures governing the construction, repair, and replacement of Buildings and other structures and improvements; and any other matters concerning the Project, duly adopted by the Association from time to time by its Board of Trustees.

**1.23. "Special Assessment"** shall mean an Assessment for Special Expenses.

**1.24. "Special Expenses"** shall mean the following: (a) the expenses incurred by the Association for the repair of damage or loss to the Common Areas; and (b) unanticipated expenses reasonably incurred by the Association to protect or further the interests of the Association or its Members.

**1.25. "Trustee" or "Trustees"** shall mean a member or members of the Board of Trustees of the Association.

## **ARTICLE 2. SUBMISSION OF PROPERTY; PROPERTY DESCRIPTION; EXPANDABILITY**

**2.1. Submission of Property.** The property described in Exhibit "A" is to be subject to the provisions of this Declaration, and shall be held, transferred, sold, conveyed, encumbered and assigned subject to the provisions herein.

**2.2. Division into Lots.** The Project is hereby divided into Lots as set forth on the Plat Maps. Each Lot currently consists of a Building and an appurtenant undivided percentage interest in and to the Common Areas as set forth in Exhibit "C" attached hereto.

**2.3. Expandability.** All or any portion of the additional land within the area described in Exhibit "B" attached hereto may be annexed pursuant to the terms of this Declaration by the owner thereof without the consent of the Members within twenty (20) years from the date of recording this Declaration at the office of the Utah County Recorder, State of Utah. In that event, each Owner of any Lot contained in the additional land annexed pursuant to the terms herein shall become a Member of the Association and all Common Areas in such annexed property shall be governed by this Declaration. If the Project is not expanded within twenty (20) years, this expandable option shall expire. No assurances are made as to the location of any Buildings, structures, or improvements that may be constructed on any portions of the additional land annexed to the Project. No assurances are made as to the number of Lots to be designated on any portion of the additional land added to the Project. No assurances are made with regard to the creation of any Common Areas and facilities (in terms of the type, size, etc.) within any portion of the additional land added to the Project. Any annexed land is restricted exclusively to the uses permitted by the Association and applicable zoning and other laws.

**2.3.1.** If and when annexed into the Project, the real property described in Exhibit "B" is anticipated to have one (1) or more Lots with surrounding Common Areas. Each Lot Owner in the Project will then own an undivided ownership interest in all the Common Areas



based upon the percentage of each said Lot Owner's rentable square footage attributed to the Building on its Lot compared with the total rentable square footage attributed to the Buildings on all the Lots in the Project.

2.3.2. The number of Lots and the Buildings constructed, or to be constructed, on any of the additional land described in Exhibit "B," should not overload the capacity of the Common Areas and facilities of the Project.

2.3.3. If annexation occurs, all or any portion of the land described in Exhibit "B" may be annexed. All or any portion of the additional land described in Exhibit "B" may be annexed simultaneously or at different times.

**2.4. Special Duties of Lot Owners in Annexed Land.** Prior to annexation of all or any part of the additional land described in Exhibit "B" into the Project, the Owner or proposed Owner of such additional land, as applicable, shall provide a site plan of the additional land designating the Lot(s) and Common Areas thereon. Upon approval of the site plan by the Association and applicable governmental authorities, as required by this Declaration and applicable laws and ordinances, the additional land shall be annexed into the Project by recording in the office of the Utah County Recorder, State of Utah, an appropriate amendment to this Declaration and a Plat Map; at which time said additional land will become part of the Project and be subject to the provisions of this Declaration. Because the site plan will only contain a footprint of the Lot (upon which a Building is to be constructed in the future) with zero rentable square footage allocated thereto, the Lot Owner will not initially own any membership interest in the Association, nor will said Lot Owner own any undivided interest in the Common Areas. Said Lot Owner will be responsible for obtaining the requisite approvals and permits from the Association and applicable governmental authorities in order to proceed with the construction of the Building(s) on the Lot(s) and the improvements on the Common Areas. Said Lot Owner shall be solely responsible for all costs and expenses associated with the construction of its Building(s), and the construction of the improvements on the Common Areas, including the maintenance, and repair thereof. It is understood and agreed that said Lot Owner shall be responsible for all improvements, maintenance and repair of the said Common Areas until such time as: (a) all improvements on the Common Areas are completed by the said Lot Owner; (b) the improvements on the Common Areas have been paid in full, and satisfactory evidence thereof has been presented to the Association (so as to prevent any mechanic's liens from being filed and recorded thereon); (c) the Building(s) is (are) completed and the Lot Owner has received an occupancy permit issued by the applicable governmental authorities; and (d) an appropriate amendment to this Declaration and an Amended Plat Map have been prepared, approved by applicable governmental authorities, and recorded in the office of the Utah County Recorder, State of Utah. When the above four (4) items have been satisfied, the said Common Areas will be maintained by the Association, the cost of which will be apportioned among the Lot Owners in proportion to their respective undivided interest in the Common Areas assessable by the Association. The above referenced amendment to this Declaration and Amended Plat Map will set forth with respect to the said Lot, among other relevant items: (i) the Lot number/letter and street address; (ii) appurtenant undivided percentage ownership interest in the Common Areas, percentage membership interest in the Association and voting percentage; and (iii) size in rentable square footage. In addition, the amendment to the Declaration will designate for all Lot Owners in the Project the revised percentages for appurtenant undivided percentage ownership

interest in the Common Areas, appurtenant percentage membership interest in the Association, and voting percentage as a result of the annexation.

### ARTICLE 3. NATURE AND INCIDENTS OF OWNERSHIP

**3.1. Lot Title.** Title to a Lot may be held or owned by any person or entity and in any manner in which title to real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

**3.2. No Separation.** No Lot may be divided or separated from its respective appurtenant undivided interest in the Common Areas. Accordingly, each Lot and its respective appurtenant undivided interest in the Common Areas shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Lot shall constitute a gift, devise, bequest, transfer, encumbrance, conveyance, or disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or this Declaration.

**3.3. Membership in Association.** Every Owner upon acquiring fee simple title to a Lot (subject to the terms and conditions set forth in SECTION 2.4) shall automatically become a Member of the Association with respect to such Lot and shall remain a Member thereof until such time as its ownership of such Lot ceases for any reason, at which time its membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

**3.4. Exhibit "C"; Undivided Interest in Common Areas; Voting.** Exhibit "C" attached to this Declaration and made a part hereof furnishes the following information with respect to each Lot: (a) Lot number/letter and street address; (b) appurtenant undivided percentage ownership interest in the Common Areas, percentage membership interest in the Association and voting percentage; and (c) size in rentable square footage. Each Lot Owner shall have, for each Lot owned, the specified undivided interest in and to the Common Areas set forth in Exhibit "C" attached hereto. Subject to SECTION 3.9 of this Declaration, with respect to any matter properly submitted for a vote of the Owners, each Owner entitled to vote shall have the right to cast, in person or by proxy, the voting percentage appurtenant to the Lot(s) owned by such Owner, as set forth in the Association's Bylaws attached hereto at Exhibit "D."

**3.5. Use of Common Areas.** Subject to the limitations contained in this Declaration, each Lot Owner shall have the non-exclusive right to use and enjoy the Common Areas designated herein and on the Plat Maps.

**3.6. Partition.** The Common Areas shall be owned in common by all the Owners of Lots as provided in this Declaration, and no Lot Owner may bring any action for partition thereof. Each Lot Owner hereby waives any right to partition the Common Areas.

**3.7. Duty of Owner to Pay Taxes on Lot Owned.** Each Lot and its respective undivided percentage interest in and to the Common Areas in the Project is subject to separate assessment and taxation of each taxing authority and special district which has such jurisdiction

over the Project for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the Project as a whole with respect to separate Lots. Accordingly, each Lot Owner will pay and discharge any and all taxes and assessments which may be assessed against such Owner relative to its Lot and appurtenant undivided interest in the Common Areas.

**3.8. Duty to Pay Association Assessments.** Each Lot Owner is obligated to pay and discharge all Assessments and charges levied by the Association as set forth herein.

**3.9. Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, any vote relating to such Lot shall be exercised as such Owners may determine among themselves, but in no event shall there be more than one unanimous vote cast with respect to any Lot. A vote cast at any Association meeting by any such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot. Multiple record Owners of a single Lot shall be unanimous in their vote for such Lot; otherwise such Lot shall not be represented by a vote.

**3.10. Record of Ownership.** Every Owner shall promptly cause to be filed of record the conveyance document (or in the case of a contract buyer, a copy of the sales contract or memorial thereof) of its Lot and shall file a copy of such conveyance document, along with the name and address said Owner desires any notices under this Declaration to be sent to, with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages its Lot or any interest therein by a Mortgage which has priority over the lien of any Assessment provided herein shall notify the Secretary of the Association of the name and address of the Mortgagee, and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the record of ownership.

**3.11. Lot and Building Maintenance.** Each Owner shall, at its own cost and expense, maintain and keep in good order and repair and in a clean and sanitary condition its respective Lot and the Building, structures, and improvements located thereon. Without limiting the generality of the foregoing:

3.11.1. Concrete. Each Lot Owner shall at all times keep the curb and gutter surrounding its Lot in good condition and shall be responsible for repairing any cracks or breaks in such concrete within a reasonable time, not to exceed sixty (60) days, after receiving notification from the Board of Trustees to do so.

3.11.2. Rubbish. Unless otherwise provided by the Association, each Lot Owner shall be responsible to have and maintain a sanitary container sufficient to maintain rubbish generated or accumulated on such Lot and the Building and structures located thereon.

## ARTICLE 4. ASSOCIATION

**4.1. Status and General Authority of Association.** The Project shall be managed, operated, and maintained by the Association of the Lot Owners. The Association, through its Board of Trustees and Officers, shall have the power to do any and all things which may be authorized, required, or permitted to be done under law and by virtue of this Declaration and the

Bylaws, including the power to levy and collect Assessments as hereinafter provided. Without limiting the generality of the foregoing, the Association shall have the following authority and powers:

4.1.1. The authority to grant, create, or vacate on such reasonable terms as deemed advisable, utility and similar easements over, under, above, across, and through the Common Areas.

4.1.2. The authority to execute and record, on behalf of all Lot Owners, any amendments to the Declaration, Bylaws or the Plat Maps which have been approved by the vote or consent of the Lot Owners necessary to authorize such amendments as provided in this Declaration or the Bylaws, as applicable.

4.1.3. The power to sue and be sued.

4.1.4. The authority to enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Lot Owners necessitated by the subject matter of the agreement has been obtained.

4.1.5. The power and authority to purchase, or otherwise acquire, and accept title to, any interest in real property so long as such action has been authorized by the vote or consent which is necessary under the circumstances.

4.1.6. The power and authority to add any interest in real property obtained pursuant to SECTION 4.1.5 above to the Project, so long as such action has been authorized by the necessary vote or consent.

4.1.7. The authority to promulgate such reasonable Rules and Regulations as may be necessary or desirable to aid the Association in carrying out its function or to ensure that the Project is maintained and used in a manner consistent with the interests of the Lot Owners. All such Rules and Regulations adopted by the Association shall be set forth in writing.

4.1.8. To the extent not assessed to or paid by the Owners directly, the Association shall pay all property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall also have the right to contest or compromise any such taxes or assessments.

4.1.9. The Association shall obtain and maintain in force such policies of insurance required by the provisions of this Declaration, and such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the Owners, and any employee, agent, guest, lessee/tenant, customer, licensee, or invitee of the same.

4.1.10. To have the power and authority to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules and Regulations promulgated by the Association, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules and Regulations.

4.1.11. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association and the Lot Owners. Any instrument executed by the Association relating to the Common Areas of the Project that recites facts which, if true, would establish the Association's power and authority to act thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

4.1.12. In fulfilling any of its duties under this Declaration, the Association shall have the power and authority to: (a) pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration; and (b) obtain, contract for, pay for, or otherwise provide for: (i) construction, maintenance, repair, and landscaping of the Common Areas on such terms and conditions as the Association shall deem appropriate; (ii) such utility services, including, without limitation, water, sewer, trash removal, electrical, telephone, cable television, communication, and natural gas services, as the Association may from time to time deem desirable; (iii) the services of architects, engineers, attorneys, certified public accountants, and such other professional or non-professional services as the Association may deem desirable; (iv) fire, police, and such other protection services as the Association may deem desirable for the benefit of the Project and the Owners; and (v) such materials, supplies, equipment, services, and labor as the Association may deem necessary.

**4.2. Composition of Association; Board of Trustees; Officers; Election; Vacancy.**

The Association is comprised of all the Members/Lot Owners in the Project. The Board of Trustees shall be elected by the general membership of the Association by majority vote as more specifically provided in the Bylaws. The Board of Trustees shall be composed of three (3) Members; provided, however, that any one Member may be elected to fill two or more of the Trustee positions, and any elected Member may appoint an individual to serve on behalf of such Member, in the sole discretion of such Member. The following Officers of the Association shall be elected from the member(s) of the Board of Trustees, be it a Member or an individual appointed by an elected Member: President, Vice President, and Secretary/Treasurer; provided, however, that any one Member or individual appointed by a Member may be elected to fulfill two or more of the Association officer positions. The Trustees shall be elected each year at the annual meeting of the Members of the Association, and shall hold office for a period of one (1) year or until their successors are elected. At the annual meeting, each Lot Owner may vote its percentage of undivided ownership interest in favor of as many Trustee positions as there are to be filled (not to be construed as permitting cumulative voting).

**4.3. Rights and Duties.** The Association shall be responsible for the general management and administration of the Project.

**4.4. Maintenance of Common Areas.** The Association shall maintain, repair, replace, and landscape the Common Areas and improvements, and each Lot Owner shall maintain, repair, and replace the Building, structures, and improvements on its Lot. The sole remedy of an Owner in connection with any failure of the Association to maintain the Common Areas is an action for specific performance brought more than thirty (30) days after written notice to the Association of the specific duty owed to the Owners by the Association which has not been timely or properly performed.

In the event that the need for maintenance or repair of the Common Areas is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the guests, customers, tenants or invitees of the Owner, the cost of such maintenance or repair shall be immediately due and payable and added to and become part of the Assessment to which such Owner's Lot is subject.

**4.5. Destruction or Condemnation of Common Areas.** If at any time the Common Areas are damaged, destroyed or condemned, whether in whole or in part, all of the Owners irrevocably appoint the Association as the Owners' true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with all issues pertaining to the Common Areas arising from or related to such occurrence. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which the Association deems necessary to appropriately exercise the powers herein granted.

**4.6. Right of Delegation to a Manager.** The Association may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. All agreements between the Association and a Manager shall be in writing.

**4.7. Payment of Services; Etc.** The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper performance of its function in the Project, including but not limited to with regard to enforcing this Declaration. The Association may arrange with other persons or entities to furnish snow removal, ground maintenance, and other services to the Project, whether such personnel are furnished or employed directly by the Association or contracted for. All agreements between the Association and other persons or entities for services shall be in writing.

**4.8. Personal Property Ownership and Use.** The Association may acquire and hold for the use and the benefit of all the Owners personal property that the Association specifically designates in writing is intended for such use and benefit. The Association may establish Rules and Regulations from time to time to govern the ownership and use of such personal property, as set forth below in SECTION 4.9.

**4.9. Rules and Regulations.** Subject to applicable zoning and other laws, and consistent with the terms of this Declaration and the Bylaws, the Association may make reasonable Rules and Regulations governing the operation and use of the Common Areas; use of personal property; architectural standards, guidelines, and procedures governing the construction, repair, and replacement of Buildings and other structures and improvements; and any other matters concerning the Project. The Association may suspend any Owner's voting rights at any meeting for periods during which such Owner fails to comply with the said Rules and Regulations, or with any other obligations of such Owner under this Declaration. In order to suspend an Owner's voting rights in any manner, the Association must first provide written notice to such Owner of the proposed suspension and then hold a hearing on the matter. The Board of Trustees of the Association must unanimously agree upon the decision to suspend an Owner's voting rights and all terms and conditions relating thereto. The Association may also

take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by law.

**4.10. Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of the Common Areas without the prior approval of the Board of Trustees of the Association. Except as provided in SECTION 2.4 dealing with annexed land, any single item structural alteration or capital improvement in the Common Areas in the amount of Fifty Thousand Dollars (\$50,000) or more in any given fiscal year shall require the unanimous consent of the Board of Trustees of the Association. Except as provided in SECTION 2.4 dealing with annexed land, any structural alterations or capital improvements in the Common Areas that in the aggregate amount to One Hundred Thousand Dollars (\$100,000) or more in any given fiscal year shall require the unanimous consent of the Board of Trustees of the Association. Any matters involving the resurfacing or sealing of the roadways or parking areas in the Common Areas shall require the unanimous consent of the Board of Trustees of the Association. The Association has the discretion to require that any structural alterations or capital improvements in the Common Areas be paid directly by the Lot Owners in proportion to their relative ownership interests in the Common Areas to accomplish tax reporting and accounting purposes of the Lot Owners.

**4.11. Extended Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**4.12. Architectural Control.** The Board of Trustees of the Association shall act in all matters pertaining to architectural control, and may establish from time to time Rules and Regulations for submitting plans for approval of any and all construction, alteration, remodeling, etc. of Buildings or other structures or improvements in the Project.

**4.13. Limitation of Liability and Indemnification of Trustees and Officers.** No Trustee or Officer of the Association acting in good faith shall be liable to any Owner, employee, agent, guest, lessee/tenant, customer, licensee, invitee, or any other person or entity for any error or omission of the Association and its representatives and employees. Each Trustee and Officer shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding knowingly fraudulent and/or criminal actions) including, without limitation, attorneys' fees reasonably incurred by such Trustee or Officer in connection with any proceeding to which it/he/she may become involved by reason of its/his/her being or having been a Trustee or Officer of said Association.

**4.14. Association.** The conveyance of each Lot and its proportionate share of the Common Areas shall be subject to the covenants, conditions, restrictions, easements, charges, and liens as contained in this Declaration and any supplements or amendments thereto recorded in the office of the Utah County Recorder, State of Utah. This Declaration provides, inter alia, that all Lot Owners in the Project shall, upon becoming the same, automatically become members of the Timpanogos Research & Technology Park Owners Association, Inc., a Utah non-profit corporation, which said Association shall maintain and administer certain facilities, maintain Common Areas in the Project, enforce this Declaration, and collect and disburse the Assessments and charges created herein. The Association has been established for the benefit of the Lot Owners in the Project.

**4.15. Lot L.** The Lot Owners understand and agree that Lot L is and has been utilized to provide services for the benefit of the Owners in the Project, including without limitation from time to time, a food services establishment, a fitness center, and a credit union (the "*Lot L Services*"). Accordingly, until such time as the Association decides to terminate or change any or all of the Lot L Services or require the Owner of Lot L to manage and/or provide the same at such Owner's sole expense, the Association will be responsible for the operation and management of the Lot L Services (and may contract with third parties to provide the operation and management of the Lot L Services). Until such time as the Association decides to allocate the responsibility, costs and expenses of providing the Lot L Services to the Owner of Lot L, the costs and expenses of providing the Lot L Services to the Owners in the Project may be assessed and apportioned by the Association among the Lot Owners in proportion to their respective undivided interest in the Common Areas as a Common Expense.

**4.16. Variance from or Exception to Provisions of this Declaration.** The Board of Trustees may, at any time, after receiving written application stating the basis therefore, grant variance from or exception to any of the requirements of this Declaration if it determines that (a) the strict application of any provision of this Declaration would result in exceptional practical difficulties to, or undue hardship upon, the Lot Owner so applying, (b) strict application of the provision or restriction is unnecessary to carry out the general purpose of this Declaration and (c) the variance or exception would not be detrimental to any other Lot within the Project.

**4.17. Violations of Restrictions.** Violation of any of the covenants, conditions, restrictions, stipulations, or agreements contained in this Declaration shall give the Board of Trustees the right to enter upon the Lot on which said violation or breach exists, and to summarily abate and remove, at the expense of the Owner, any erection, thing or condition that may be or exist thereon contrary to the provisions hereof, without being deemed guilty of trespass. The result of every action or omission whereby any covenant, condition, restriction, stipulation, or agreement of this Declaration is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be applicable against such condition. Such remedy shall be deemed cumulative and not exclusive.

## ARTICLE 5. ASSESSMENTS

**5.1. Personal Liability and Lien.** Each Owner shall, by acquiring or in any way becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the Assessments described in this ARTICLE 5, together with interest, costs, and attorneys' fees, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made until fully paid; and (b) the personal joint and several obligation of the Owner or Owners of such Lot at the time the Assessment becomes due. A lawsuit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may exempt itself or its Lot from liability for payment of Assessments by waiver of its rights in the Common Areas or by abandonment of its Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, interest, costs, and attorneys' fees which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.



**5.2. Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the best interests of Lot Owners in the Project. Without limiting the generality of the foregoing, the use made by the Association of funds obtained from Assessments may include payment of the cost of: (a) taxes and insurance on the Common Areas; (b) maintenance, repairs, and improvements of the Common Areas; (c) establishment and funding of a reserve to cover major repairs, replacements or improvements in the Common Areas (contingent upon the prior unanimous consent of the Board of Trustees of the Association); and (d) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Bylaws.

**5.3. Annual Estimated Assessments.** The Association shall determine annually on a fiscal year basis, the total Annual Assessment amount for the Project based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and the Project.

**5.4. Apportionment of Assessments.** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among the Lots in proportion to their respective undivided interest in the Common Areas assessable by the Association.

**5.5. Establishment, Notice, and Payment of Assessments.** The Association shall determine the Annual Assessment amount for the Project (as set forth in SECTION 5.3 above) and give written notice to each Owner as to the amount of its share of the Assessment with respect to its Lot (divided into monthly installments) not less than thirty (30) days prior to the beginning of the next fiscal year; provided, however, that the first Annual Assessment shall be for the balance of the fiscal year remaining after the day fixed by the Association as the date of commencement of the Assessment. The Annual Assessment amount may be increased by the Association each fiscal year by not more than twenty-five percent (25%) more than the highest Annual Assessment of the previous three (3) years without the unanimous consent of the Board of Trustees of the Association (specifically excluding increases in the Assessment amount due to tax liability). The Annual Assessment shall be payable by each Lot Owner in equal monthly installments due on or before the first (1<sup>st</sup>) day of each month. Each monthly installment of the Annual Assessment shall accrue interest at the rate of one and one-half percent (1½%) per month, assessed and compounded daily, from the date it becomes due and payable if not paid within ten (10) days after such date.

**5.6. Special Assessments.** In addition to the Annual Assessments authorized hereunder, subject to any applicable approval requirements set forth in this Declaration, the Association may determine the amount and levy Special Assessments payable over such period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the Project or any other part thereof, shortfalls in the Annual Assessments, or for any other expenses incurred or to be incurred as provided in this Declaration. Any amount assessed pursuant thereto shall be assessed to Owners in proportion to their respective undivided interest in and to the Common Areas. Notice in writing of the amount of any such Special Assessment and the time for payment thereof shall be given promptly to the Owners. A Special Assessment, or any portion thereof as determined by the Association, shall bear interest at the rate of one and one-half percent (1½%) per month, assessed and compounded daily, from the date it becomes due and payable if not paid within ten (10) days after such date. Unless otherwise agreed to by

the unanimous consent of the Board of Trustees of the Association, all major repairs, replacements, or improvements in the Common Areas that are anticipated to cost One Hundred Thousand Dollars (\$100,000) or more for any single item or in the aggregate, in any given fiscal year, will not be paid from any reserve funds maintained by the Association, but will be paid for by Special Assessment of the Lot Owners in proportion to said Lot Owners' respective undivided interest in the Common Areas.

**5.7. Reimbursement Assessments on a Specific Lot.** In addition to the Annual Assessments and any Special Assessments authorized herein, the Association may levy at any time Reimbursement Assessments: (a) on every Lot especially benefited by any improvement made by the written request of the Owner of the Lot to be charged; (b) on every Lot whose Owner or occupant has caused any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to the provisions of this Declaration. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the special benefit or cause of damage, maintenance, repair work, or enforcement action, as the case may be, and such Reimbursement Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lot(s) benefited.

**5.8. Liens for Unpaid Assessments.** All sums assessed to any Lot pursuant to this ARTICLE 5, together with interest thereon as provided herein, and all costs, expenses, and attorneys' fees incurred, with or without lawsuit or before or after judgment, in collecting delinquent Assessments or accounts or foreclosing against the Lots concerned, shall be secured by a lien on such Lot in favor of the Association and, upon recording of a Notice of Lien by the Association shall be a lien upon the Lot prior to all other liens and encumbrances, recorded or unrecorded, except: (a) first-position Mortgages; and (b) tax and special assessment liens on the Lot in favor of any governmental assessment authority or special improvement district.

**5.9. Consent by Lienors.** All lienors acquiring liens on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens shall be inferior to future liens for Assessments, as provided herein, whether or not such consent be specifically set forth in the instrument creating such liens.

**5.10. Notice of Lien.** To evidence a lien for sums assessed pursuant to this ARTICLE 5, the Association may prepare a written Notice of Lien setting forth the amount of the Assessment, the due date, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such Notice of Lien shall be signed by or on behalf of the Association and recorded in the office of the Utah County Recorder, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in payment of the Assessment or any installment thereof. Such lien may be enforced by foreclosure by the Association in the same manner in which Mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the Notice of Lien, and all reasonable attorneys' fees. All such costs, expenses, and attorneys' fees shall be secured by the lien being foreclosed. The lien shall also secure, and the Owner shall also be required to pay to the Association, any Assessments against the Lot

which shall become due during the period of foreclosure. The Association shall have the right and the power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the subject Lot as the Owner thereof.

**5.11. Release of Lien.** A Release of Notice of Lien shall be executed by or on behalf of the Association and recorded in the office of the Utah County Recorder, State of Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded Notice of Lien.

**5.12. Payment by Encumbrancer.** An encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this ARTICLE 5, and upon such payments such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority. The Association, upon written request, payment of a reasonable fee, and evidence of such encumbrance, shall report to any encumbrancer of a Lot any unpaid Assessment remaining unpaid for longer than thirty (30) days after the same shall have become due and payable.

**5.13. Information Concerning Unpaid Assessments.** Upon payment of a reasonable fee, and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot; the amount of the current Assessment and the portion thereof, if any, which has theretofore been paid; and credit for advance payments of prepaid items, including but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**5.14. Personal Liability of Purchaser.** The personal obligation of an Owner to pay unpaid Assessments against its Lot as described herein shall not pass to successors in title unless assumed by them. However, a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Lot and shall not relieve any subsequent Owner from personal liability for the payment of future Assessments.

**5.15. Assessment and Collection by Association.** The Association under this Declaration will maintain the Common Areas of the Project, except as otherwise contained herein. The Association is authorized to determine the amount of Assessments and levy the same for the purposes of performing functions it is authorized to perform with the Project. With respect to the Lots in the Project, the Association is authorized to collect from the Lot Owners and enforce liability for the payment of Assessments levied pursuant to this Declaration.

**5.16. Tax Liability.** It is the objective of the Association to minimize its overall tax liability. To accomplish this Objective, the Lot Owners acknowledge and agree that the Assessments will be closely monitored and controlled by the Association in timing and amount so that the Assessments and expenses match as closely as possible for tax reporting and accounting purposes of the Lot Owners. In the event that the Association incurs any tax liability, such tax liability shall be apportioned among the Lot Owners in proportion to their respective undivided interest in the Common Areas assessable by the Association. In the event that applicable consolidation rules for federal and state income taxes require any Lot Owner to include the Association in said Lot Owner's consolidated income tax returns, then the

Association shall enter into an appropriate Tax Sharing Agreement with all Lot Owners to assure that any and all income tax liability borne by the particular Lot Owner as a result of the consolidation of the Association into said Lot Owner's consolidated income tax returns will be apportioned, assessed, and paid by all the Lot Owners in proportion to their respective undivided interest in the Common Areas.

**ARTICLE 6. PROPERTY RIGHTS; CONVEYANCES; EASEMENTS**

**6.1. Easement Concerning Common Areas.** Each Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have the right to vehicular and pedestrian ingress and egress over, upon, and across the Common Areas necessary for access to its Lot. Each Owner shall have the right to utilize the roadways, parking areas, and landscaped areas within the Common Areas. Such right and easement shall be appurtenant to, and shall pass with, title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any employee, agent, guest, lessee/tenant, customer, licensee, invitee, contract purchaser, or other person or entity that uses and/or occupies such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage, and sewer purposes for which such easements are intended for use in common with others.

**6.2. Form of Conveyancing.** Any deed, lease, Mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved by said Lot's specific number/letter as shown on the Plat Maps on record in the office of the Utah County Recorder, State of Utah, and in substantially the following form:

The following described tract of land situated in Utah County, State of Utah, to wit:

Lot \_\_\_\_\_ as contained within Phase \_\_\_\_\_, Timpanogos Research & Technology Park (A Planned Unit Development), Orem, Utah, as the same is identified in the Plat Map for Timpanogos Research & Technology Park (A Planned Unit Development), Orem, Utah, recorded on \_\_\_\_\_, in Utah County Recorder's Office, State of Utah, as Entry No. \_\_\_\_\_, Map No. \_\_\_\_\_ (as said Plat Map may have been amended or supplemented), and in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Timpanogos Research & Technology Park (A Planned Unit Development), recorded on \_\_\_\_\_, in the Utah County Recorder's Office, State of Utah, as Entry No. \_\_\_\_\_ (as said Declaration may have been amended or supplemented).

TOGETHER WITH the undivided ownership interest in the Common Areas which is appurtenant to said Lot as more particularly described in said Declaration and said Plat Map (as said Declaration and Plat Map may have been amended or supplemented).

SUBJECT TO restrictions, covenants, easements, and rights-of-way of record, visible by inspection or otherwise.

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 Lot.

**6.3. Leasing.** A Lot Owner may lease all or a portion of the Building on its Lot in accordance with the use and occupancy requirements set forth herein. All leases and subleases of all or a portion of the Building on a particular Lot shall be in writing executed by the appropriate parties, and, except for leases or subleases in existence prior to the date of this Declaration, shall be subject in all respects to the provisions of this Declaration and the Bylaws of the Association, and any failure by the lessee/tenant to comply with the terms of such documents shall be a default under the lease.

**6.4. Limitations on Common Areas.** An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

6.4.1. The right of the Association to govern by Rules and Regulations the use and operation of the Common Areas by the Owners.

6.4.2. The right of the City of Orem, County of Utah, State of Utah, and any other governmental or quasi-governmental body having jurisdiction over the Project to have access to and rights of ingress and egress over and across any street, parking area, sidewalk, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service.

6.4.3. The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be consented to in writing by: (a) all holders of Mortgages secured by Lots; and all Owners of the Lots.

**6.5. Easement for Utility Services.** There is hereby created a blanket easement upon, across, under, and over the Common Areas for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to, water (irrigation and culinary), drainage, sewer, natural gas, telephone, cable television, communication, fiber optic cables, network cabling conduits, electricity, and other utility services, as shall be under the control and direction of the Association. Within such easement, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities.

**6.6. Easement for Encroachments.** If any part of the Common Areas now or hereafter encroaches upon any Lot, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. Such encroachments shall not be considered to be encumbrances on either the Common Areas or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original placement and construction of the Building(s) on the Lots, by error in the Plat Maps, by settling, raising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**6.7. Easement for Construction and Development Activities.** The Association and each Lot Owner, including Owners of annexed land as set forth in SECTION 2.4, shall have such

easements and vehicular and pedestrian rights of ingress and egress over, under, upon, across, and through the Project, and the right to make such noise, dust, and other disturbance as may be reasonably incident to or necessary for the: (a) construction of Buildings and other improvements on the Lots; (b) improvement of the Common Areas and construction, installation, and maintenance of roads, parking areas, sidewalks, walkways, structures, landscaping, and other improvements designed for the use and enjoyment of some or all of the Owners; and (c) construction, installation, and maintenance on lands within, adjacent to, or serving the Project of roads, walkways, and other facilities planned for dedication to appropriate governmental authorities.

**6.8. Easement to Association.** The Association shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

## ARTICLE 7. IMPROVEMENTS

**7.1. Improvements.** The Plat Maps designate the number of Lots and the Common Areas in the Project.

**7.2. Description of Buildings and Lots.** The Project currently consists of one (1) phase (Phase I). Phase I consists of fifteen (15) Lots, upon each of which are constructed Buildings.

7.2.1. Each Lot has or is anticipated to have individual culinary water, natural gas, and electric meters.

7.2.2. Each Lot has or is anticipated to have separate telephone/communication hook-ups.

7.2.3. The primary construction of the exterior of the Buildings is a combination of brick, rock, and aluminum panel.

7.2.4. The Project has a portion of the Common Areas landscaped with grass, trees, shrubs, and flowers, equipped with sprinkler systems. Water for the sprinkling systems will be common to the Project, and will be allocated, assessed, and paid through the Association.

7.2.5. The Project has outdoor electrical lighting. Electricity for the outdoor lighting will be common to the Project, and will be allocated, assessed, and paid through the Association.

7.2.6. The Project has a portion of the Common Areas constructed in paved parking areas.

7.2.7. The Project has a portion of the Common Areas constructed in basketball and volleyball courts.

7.2.8. The Project has throughout the Common Areas various bicycle racks.

7.2.9. The Project has a portion of the Common Areas constructed in various private roadways which will allow vehicular ingress/egress to dedicated public streets in Orem, Utah, to wit: Research Way, Timpanogos Parkway, Technology Way, 800 East Street, 1200 North Street and 1600 North Street.

7.2.10. The Project has as part of the Common Areas two (2) pedestrian walkway/bridges spanning the Murdock Canal.

7.2.11. The Project shall have such other improvements as indicated on the Plat Maps and in any plans and specifications associated with the future expansion and development of the Project.

## **ARTICLE 8. RESTRICTIONS**

**8.1. Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their nature and with the use restrictions applicable to the Lots.

**8.2. Use of Lots.** Each of the Lots in the Project is intended to be used for professional and commercial uses as permitted by applicable zoning and other applicable laws.

**8.3. Enforcement of Declaration.** The following persons or entities have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration: (a) any Owner; or (b) the Association. The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys' fees from the non-prevailing party.

**8.4. Restrictions Concerning Common Areas.** There shall be no obstructions of the Common Areas created or permitted by the Owners, their employees, agents, lessees/tenants, guests, customers, licensees, or invitees without the prior written consent of the Association. The Association may by Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots or the Common Areas, including but not limited to imposing a reasonable limitation on the number of guests, customers or invitees per Owner who at any given time may be permitted to use the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon prior consent of the Association. Unless otherwise authorized by the Association in writing, no admission fees, charges for use, leases or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

### **8.5. Miscellaneous Restrictions.**

8.5.1 Nothing shall be done to or kept in or on any Lot or the Common Areas or any part thereof which would result in the cancellation of the insurance of the Project or any part thereof, or increase the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. If any activity occurring or materials stored or used on a Lot or the Common Areas results in an increase in any insurance premium for the Project, the Owner responsible must pay

the increase in the premium, due at the time the premium is due. The cost of such increase shall be assessed against the Owner responsible therefor and such Assessment shall be secured by a lien on such Owner's Lot in favor of the Association in accordance with SECTION 5.8.

8.5.2 Nothing shall be done to or kept in or on any Lot or the 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.

8.5.3 No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any employee, agent, lessee/tenant, guest, customer, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all losses resulting from any such damage or waste caused thereby.

8.5.4 No rubbish shall be stored or allowed to accumulate on any Lot or the Common Areas, except in sanitary containers. No unsightly articles or personal property shall be permitted to remain in or near a Lot or the Common Areas so as to be visible from any other Lot or the Common Areas. After forty-eight (48) hours' notice, the Association shall have the right to tow away or remove the offending article or property which is in violation of this Section, as determined by the Association in its sole discretion, and the cost of such removal shall be assessed against the Owner responsible for such violation and such Assessments shall be secured by a lien on such Owner's Lot in favor of the Association in accordance with SECTION 5.8.

8.5.5 No noxious, destructive, or offensive activity or occurrence shall be conducted or permitted in or on any Lot or the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner in the Project. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed anywhere in the Project without the prior written approval of the Board. The Board of Trustees shall have the authority to determine, in its sole discretion, if an activity or occurrence is noxious, destructive or offensive, or constitutes an annoyance or nuisance to any other Owner in the Project.

8.5.6 No structures of a temporary nature, trailer, tent, shack, shed, garage, barn or other outbuildings shall be allowed on the Project, either temporarily or permanently, at any time, unless otherwise agreed to by the Association in writing.

8.5.7 No activities shall be conducted on the property, no materials shall be used or stored on the property, and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property, and each Owner shall indemnify and hold the Association and the other Owners harmless against all damages caused by or losses resulting from any such unsafe and/or hazardous activity, material or improvement.

8.5.8 No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Building or elsewhere without written permission from the Board of Trustees. Such antennas, if used, must be of the type that is installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Lot Owner's premises or equipment.



Notwithstanding the foregoing, however, the Association reserves the right and option to install cable service lines and antennas throughout the Project as deemed necessary in its sole discretion.

**8.6. Parking.** The parking areas are for the use of the Owners and their respective employees, agents, lessees/tenants, guests, customers, licensees, and invitees. The use and regulation of the parking areas shall be under the control of the Association and subject to applicable zoning and other laws.

**8.7. No Violation of Rules and Regulations.** No Owner shall violate the Rules and Regulations for the use of the Lots and the Common Areas as may be adopted from time to time by the Association.

**8.8. Signs and Advertising.** All signs and other advertising shall be in conformance with all applicable laws, ordinances, and regulations, and in conformance with the Rules and Regulations promulgated by the Association from time to time and shall first be approved by the Board before being constructed or placed within the Property.

**8.9. Fences.** No fence materials may be installed or placed on any Lot unless such installation and placement is approved by the Board prior to erection.

**8.10. Compliance with Recorded Easements and Covenants.** The Owners acknowledge and agree that the Project is subject to various recorded easements, agreements, covenants, conditions, and restrictions, including, but not limited to: (a) the Declaration of Covenants, Conditions, and Restrictions for Timpanogos Research and Technology Park, dated April 10, 1984; and recorded in the office of the Utah County Recorder, State of Utah, on April 12, 1985, as Entry No. 10079, in Book 2210, on Pages 212 et seq.; and (b) the Agreement, dated February 12, 1996, and recorded in the office of the Utah County Recorder, State of Utah, on February 20, 1996, as Entry No. 13460, in Book 3891, on Pages 694, et seq. Accordingly, the Project and the provisions in this Declaration are subject to the terms and conditions of any such recorded easements, agreements, covenants, conditions, and restrictions, and the Owners agree to comply therewith.

## ARTICLE 9. ARCHITECTURAL CONTROL

**9.1. Architectural Control.** The Board of Trustees of the Association shall be in charge of all matters concerning architectural control in the Project, and shall cooperate and work with applicable governmental authorities to ensure that all Buildings, improvements, and landscaping within the Project conform with any and all applicable standards, guidelines, procedures, plans and specifications, laws, and ordinances, and harmonize with existing surroundings and structures.

**9.2. Submission to Board of Trustees.** No Building, structure, or improvements of any kind shall be constructed, maintained, altered, or refurbished unless complete plans and specifications therefor have first been submitted to and approved by the Board of Trustees of the Association and applicable governmental authorities.

**9.3. Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Board of Trustees of the Association shall use its best judgment to ensure that all Buildings, improvements, construction, landscaping, and alterations within the Project conform to any and all applicable standards, guidelines, procedures, plans and specifications, laws, and ordinances, and harmonize with existing surroundings and structures.

**9.4. Approval Procedure.** Subject to submission and approval by applicable governmental authorities, any plans and specifications submitted to the Board of Trustees of the Association shall be approved or disapproved by it in writing within sixty (60) days after submission. In the event the Board of Trustees fails to take any action within such period it shall be deemed to have approved the material submitted.

**9.5. Liability for Damages.** The Board of Trustees shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this ARTICLE 9.

**9.6. Diligent Prosecution to Completion.** Once begun, any Buildings, improvements, construction, landscaping, or alterations approved by the Board of Trustees of the Association and applicable governmental authorities shall be diligently prosecuted to completion.

## ARTICLE 10. INSURANCE

**10.1. Insurance.** The Association shall secure or cause to be secured such policies of liability insurance for bodily injury and property damage, fire and hazard insurance, fidelity bond coverage, or other types of insurance to ensure the Common Areas, the Association, the Owners and/or others against such risks as the Association may deem advisable. Such insurance policies shall provide such coverages and protections, provide such insurable amounts, and contain such endorsements as deemed advisable by the Association.

**10.2. Review of Insurance.** The Association shall periodically, and whenever requested by Owners entitled to vote at least one-half (1/2) of the votes attributable to all Lots, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions taken on such review to the Owner of each Lot and to the holder of any Mortgage on any Lot who shall have requested in writing a copy of such report. Copies of every policy of insurance procured by the Association shall be available for inspection by any Owner upon such reasonable terms as the Association determines.

**10.3. Lots and Buildings Not Insured by Association.** Unless determined otherwise by the Association, the Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage, or other insurance covering any Lot and the Building, improvements, structures, and acts and events thereon, and personal property located therein. Accordingly, Owners of Lots in the Project are advised to obtain fire, extended coverage, and liability insurance in regards to their Lots, Buildings, improvements, structures, personal property, and the activities conducted therein or thereon.

## ARTICLE 11. RIGHTS OF MORTGAGEES

The Association may from time to time amend this Declaration to adopt such provisions regarding the rights of Mortgagees as the Association deems necessary and appropriate.

## ARTICLE 12. TERMINATION

**12.1. Required Vote.** This Declaration shall remain in effect indefinitely and may be terminated only after a resolution in favor of termination is approved by the Board of Trustees and an agreement to terminate the Declaration is approved by Owners entitled to vote at least two-thirds (2/3) of the votes attributable to all Lots.

**12.2. Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Utah County, Utah and is effective only on recordation.

## ARTICLE 13. BYLAWS

The Bylaws of the Association are attached hereto as Exhibit "D" and incorporated herein by this reference.

## ARTICLE 14. GENERAL PROVISIONS

**14.1. Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered or mailed, registered or certified, postage prepaid, to the person or entity named as the Owner, at the last known address for such person or entity as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the President of the Association at the following address: 1501 North Technology Way, Building A, Suite 3300, Orem, Utah 84097.

**14.2. Amendment.** Except as provided in and/or subject to the terms below, the vote of at least two-thirds (2/3s) of the votes attributable to all Lots shall be required to amend this Declaration or the Plat Maps. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument, the Association shall certify that the vote required by this SECTION 14.2 for amendment has occurred.

**14.3. Consent in Lieu of Vote.** In any case in which this Declaration requires authorization or approval of a transaction with the assent or affirmative vote of a stated portion or percentage of the votes attributable to all Lots, such requirement may be fully satisfied by

obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least the necessary percentage of such votes.

**14.4. Enforcement.** Each Lot Owner shall comply strictly with the provisions of this Declaration and the Rules and Regulations promulgated pursuant hereto, as the same may be lawfully amended from time to time. Any Owner in violation of this Declaration or any of the Rules and Regulations promulgated pursuant hereto shall be liable for and immediately pay all costs and expenses incurred by the Association in enforcing such provisions, including without limitation reasonable attorneys' fees and costs and monies paid and due for damages or injunctive relief, or both, maintainable by the Association or in a proper case by an aggrieved Lot Owner, whether such costs are incurred in making demands, taking corrective action, engaging in negotiations, or pursuing a legal action in a court of law, and all such costs shall also incur interest at the rate of one and one-half percent (1½%) per month, assessed and compounded daily, from the date such cost is first incurred by the Association until paid in full in by the Owner.

**14.5. Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the elapse of time or the number of violations or breaches which may occur.

**14.6. Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both genders, and each shall include corporations, limited liability companies, partnerships, and other legal entities, as applicable. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction, and enforcement of this Declaration, and the parties consent to jurisdiction and venue in the Courts of Utah County, State of Utah.

**14.7. Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of all parties who hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots and in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot and in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

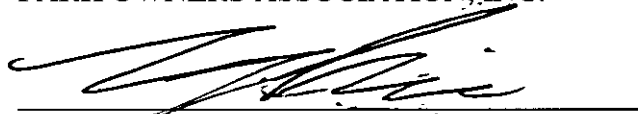
**14.8. Limited Liability.** Neither the Association, the Board of Trustees of the Association, the Officers of the Association, nor any officer, director, member, partner, employee, or agent of the same shall be personally liable to any other person, entity or party for any action or any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

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

*[Remainder of page intentionally left blank; signature page to follow]*

WITNESS the hand of the President of Timpanogos Research & Technology Park Owners Association, Inc. hereto on the day herein above first written, acknowledging, affirming and certifying that the foregoing constitutes the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Timpanogos Research & Technology Park (A Planned Unit Development), duly approved and adopted on or about October 17, 2006.

TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC:

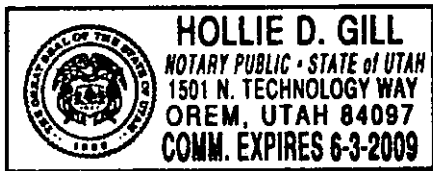


R. Scott McQuarrie, President

STATE OF UTAH, CITY/COUNTY OF SALT LAKE, TO WIT:

I HEREBY CERTIFY that on this 17<sup>th</sup> day of October, 2006, before, me, the subscriber, a Notary Public of the State of Utah, personally appeared R. Scott McQuarrie, known to me or suitably proven, who acknowledged himself to be President of the Timpanogos Research & Technology Park Owners Association, Inc., named in the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions, and who, being authorized to do so, in my presence, signed the same and acknowledged the same to be the act and deed of the Timpanogos Research & Technology Park Owners Association, Inc.

AS WITNESS my hand and seal.



Hollie D. Gill  
Notary Public

My Commission Expires: 6-3-2009

EXHIBIT "A"PHASE I

The following described tract of land situated in Utah County, State of Utah, to wit:

COMMENCING at a point which lies in the North right-of-way line of the Murdock Canal and the West right-of-way line of 800 East Street, said point is also located North 01°00'22" West along the section line 1386.98 feet and West 12.20 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said Murdock Canal right-of-way line the next 3 calls: North 56°07'30" West 355.33 feet to a point of curvature; thence along a 365.00 foot radius curve to the right 64.82 feet through a central angle of 10°10'28", the chord of which bears North 51°02'15" West 64.73 feet; thence North 45°57'00" West 520.68 feet to the East right-of-way line of Technology Way; thence North 38°00'00" East along said Technology Way right-of-way line 453.21 feet to a point of curvature; thence along a 15.00 foot radius curve to the right 23.56 feet through a central angle of 90°00'00", the chord of which bears North 83°00'00" East 21.21 feet to a point in South right-of-way line of 1600 North Street; thence along the 1600 North Street right-of-way line the next 2 calls: thence South 52°00'00" East 421.22 feet to a point of curvature; thence along a 217.00 foot radius curve to the right 195.24 feet through a central angle of 51°33'00", the chord of which bears South 26°13'30" East 188.72 feet to a point in the West right-of-way line of said 800 East Street; thence South 00°27'00" East along said 800 North right-of-way line 531.89 feet to the point of beginning. Area = 8.529 acres.

COMMENCING at a point in the North right-of-way line of the Murdock Canal and the West right-of-way line of Technology Way, said point is also located North 01°00'22" West along the section line 2022.82 feet and West 756.74 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said Murdock Canal right-of-way line the next 6 calls: thence North 45°57'00" West 96.54 feet to a point of curvature; thence along an arc of a 385.00 foot radius curve to the left 187.59 feet through a central angle of 27°55'01", the chord of which bears North 59°54'30" West 185.74 feet; thence North 73°52'00" West 312.50 feet to a point of curvature; along an arc of a 65.00 foot radius curve to the right 17.14 feet through a central angle of 15°06'31", the chord of which bears North 66°18'45" West 17.09 feet; thence North 58°45'30" West 897.50 feet to a point of curvature; along an arc of a 235.00 foot radius curve to the left 8.20 through a central angle of 01°59'58", the chord of which bears North 59°45'30" West 8.20 feet; thence North 141.92 feet to the South right of way line of 1600 North Street; thence along said 1600 North Street the next 7 calls: thence South 89°37'00" East 489.21 feet to a point of curvature; thence along an arc of a 467.00 foot radius curve to the right 168.04 feet through a central angle of 20°37'00", the chord of which bears South

79°18'30" East 167.13 feet; thence South 69°00'00" East 258.11 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the right 34.82 feet through a central angle of 19°56'54", the chord of which bears South 59°01'33" East 34.64 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the left 34.82 feet through a central angle of 19°56'54", the chord of which bears South 59°01'33" East 34.64 feet; thence South 69°00'00" East 150.00 feet to a point of curvature; thence along an arc of a 455.00 foot radius curve to the right 66.19 feet through a central angle of 08°20'04", the chord of which bears South 64°49'58" East 66.13 feet to a point of curvature; thence along an arc of a 15.00 foot radius curve to the right 25.83 feet through a central angle of 98°39'56", the chord of which bears South 11°19'58" East 22.76 feet to a point in the West right-of-way line of Technology Way; thence South 38°00'00" West along said Technology Way right-of-way line 430.88 feet to the point of beginning. Area = 8.563 acres.

COMMENCING at a point in the Northeast right-of-way line of Timpanogos Parkway, said point is also located North 01°00'22" West along the section line 1149.10 feet and West 760.38 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 45°00'00" West along said Timpanogos Parkway right-of-way line 487.51 feet to a point of curvature; thence along a 15.00 foot radius curve to the right 21.73 feet through a central angle of 83°00'00", the chord of which bears North 03°30'00" West 19.88 feet to a point in the Southeast right-of-way line of Technology Way; thence North 38°00'00" East along said Technology Way right-of-way line 506.05 feet to a point in the South right-of-way line of the Murdock Canal; thence along said Murdock Canal right-of-way line the next 3 calls: thence South 45°57'00" East 510.61 feet to a point of curvature; thence along a 460.00 foot radius curve to the left 81.69 feet through a central angle of 10°10'28", the chord of which bears South 51°02'15" East 81.58 feet; thence South 56°07'30" East 35.35 feet to a point in the Northwest boundary line of Phase 2, Timpanogos Research and Technology Park, Plat "K"; thence along said Phase 2 boundary line the next 6 calls: thence South 35°55'15" West 42.30 feet; thence South 43°07'10" West 108.60 feet; thence South 46°21'54" East 30.13 feet; thence South 46°07'48" West 160.00 feet; thence South 46°04'00" West 100.19 feet; thence South 44°49'36" West 227.89 feet to the point of beginning. Area = 6.962 acres.

COMMENCING at a point in the North right-of-way line of 1200 North Street, said point is also located South 89°54'39" West along the section line 60.08 feet and North 33.00 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°54'39" West along the said North right-of-way line of 1200 North Street 267.99 feet to the East boundary line of Phase 3, Timpanogos Research and Technology Park, Plat "K"; thence North 00°07'16" West along said Phase 3 boundary line 677.09 feet to the South right-of-way line of Timpanogos Parkway; thence along said Timpanogos Parkway right-of-way line the next 4 calls: thence along an arc of a 265.00 foot radius curve to the left 28.97 feet through a central angle of 06°15'43", the chord



of which bears South 86°52'06" East 28.96 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the right 31.75 feet through a central angle of 18°11'35"; the chord of which bears South 80°54'09" East 31.62 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the left 31.75 feet through a central angle of 18°11'35", the chord of which bears South 80°54'09" East 31.62 feet; thence East 188.69 feet to a point of curvature; thence along a 15.00 foot radius curve to the right 23.53 feet through a central angle of 89°52'36", the chord of which bears South 45°03'38" East 21.19 feet to a point on the West right-of-way line of 800 East Street; thence along said 800 East Street right-of-way line the next 4 calls: thence South 00°07'16" East 366.84 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the right 34.82 feet through a central angle of 19°56'52"; the chord of which bears South 09°51'11" West 34.64 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the left 34.82 feet through a central angle of 19°56'52", the chord of which bears South 09°51'11" West 34.64 feet; thence South 00°07'16" East 200.00 feet to a point of curvature; thence along an arc of a 15.00 foot radius curve to the right 23.57 feet through a central angle of 90°01'56"; the chord of which bears South 44°53'42" West 21.22 feet to the point of beginning. Area = 4.450 acres.

COMMENCING at a point in the North right-of-way line of 1200 North Street, said point is also located South 89°54'39" West along the section line 1179.98 feet and North 33.01 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said 1200 North Street right-of-way line 829.32 to the West boundary line of the Timpanogos Research and Technology Park, Plat "K", Phase 1, Parcel 5; thence along said Phase 1 boundary line the next 3 calls: North 00°32'02" West 759.03 feet; thence East 6.07 feet; thence North 00°05'00" West 1574.20 feet to the South right-of-way line of the Murdock Canal; thence along said Murdock Canal right-of-way line the next 8 calls; North 74°34'30" East 183.34 feet to a point of curvature; thence along an arc of a 135.00 foot radius curve to the right 109.96 feet through a central angle of 46°40'00", the chord of which bears South 82°05'30" East 106.94 feet; thence North 31°14'30" East 5.00 feet; thence South 58°45'30" East 397.50 feet to a point of curvature; thence along an arc of a 160.00 foot radius curve to the left 42.19 feet through a central angle of 15°06'31", the chord of which bears South 66°18'45" East 42.07 feet; thence South 73°52'00" East 312.50 feet to a point of curvature; thence along an arc of a 290.00 foot radius curve to the right 141.30 feet through a central angle of 27°55'00", the chord of which bears North 59°54'30" West 139.91 feet; thence South 45°57'00" East 106.61 feet to a point in the Northwest right-of-way line of Technology Way; thence along said Technology Way right-of-way line South 38°00'00" West 511.35 feet to a point of curvature; thence along an arc of a 65.00 foot radius curve to the left 94.16 feet through a central angle of 83°00'00", the chord of which bears South 03°30'30" East to a point in the Southwest right-of-way line of Timpanogos Parkway; thence South 45°00'00" East along said Timpanogos Parkway right-of-way line 232.90 feet to a point of curvature; thence along an arc of a 15.00 foot radius curve to the

right 23.56 feet through a central angle of  $90^{\circ}00'00''$ , the chord of which bears South  $00^{\circ}00'00''$  East 21.21 feet to a point in the West right-of-way line of Research Way; thence along said Research Way right-of-way line the next 6 calls: South  $45^{\circ}00'00''$  West 140.00 feet to a point of curvature; thence along an arc of a 205.00 foot radius arc to the left 161.01 feet through a central angle of  $45^{\circ}00'00''$ , the chord of which bears South  $22^{\circ}30'00''$  West 156.90 feet; thence South 719.83 feet to a point of curvature; thence along the arc of a 100.00 foot radius curve to the right 31.76 feet through a central angle of  $18^{\circ}11'42''$ , the chord of which bears South  $09^{\circ}05'51''$  West 31.62 feet to a point of curvature; thence along the arc of a 100.00 foot radius curve to the left 31.76 feet through a central angle of  $18^{\circ}11'42''$ , the chord of which bears South  $09^{\circ}05'51''$  West 31.62 feet; thence South 200.00 feet to a point of curvature; thence along an arc of a 15.00 foot radius curve to the right 23.54 feet through a central angle of  $89^{\circ}55'12''$ , the chord of which bears South  $44^{\circ}57'20''$  West 21.20 feet to the point of beginning. Area = 45.865 acres.

SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Property or any portion thereof, including, without limitation, any Mortgage (and nothing herein shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line or similar facility which traverses or partially occupies the above described Property at such time as construction of all Project improvements are complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; and to each of the covenants, easements, conditions, and restrictions contained in this Declaration.

**EXHIBIT "B"**

THE DESCRIPTION OF THE ADDITIONAL LAND TO BE ANNEXED TO THE PROJECT IS SET FORTH AND ATTACHED IN THIS EXHIBIT "B" TO THE DECLARATION SOLELY FOR PURPOSES OF IDENTIFICATION. THE DECLARATION IS NOT INTENDED AS AND SHOULD NOT BE DEEMED TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTON, OR LIMITATION UPON ANY PORTION OF SUCH ADDITIONAL LAND UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE PROJECT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

**PHASE II**

The following described tract of land situated in Utah County, State of Utah, to wit:

COMMENCING at a point in the North right-of-way line of Timpanogos Parkway, said point is also located North 01°00'22" West along the section line 763.11 feet and West 48.24 feet from the Southeast corner of section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said North Timpanogos Parkway the next 5 calls: West 194.50 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the left 22.41 feet through a central angle of 12°50'17", the chord of which bears South 83°34'51" West 22.36 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the right 22.41 feet through a central angle of 12°50'17", the chord of which bears South 83°34'51" West 22.36 feet to a point of curvature; thence along an arc of a 215.00 foot radius curve to the right 168.86 feet through a central angle of 45°00'00", the chord of which bears North 67°30'00" West 164.55 feet; thence North 45°00'00" West 463.80 feet; thence North 44°49'36" East 227.89 feet; thence South 46°04'00" East 100.19 feet; thence North 46°07'48" East 160.00 feet; thence North 46°21'54" West 30.13 feet; thence North 43°07'10" East 108.60 feet; thence North 35°55'15" East 42.30 feet to the South boundary line of the Murdock Canal thence South 56°07'30" East along said Murdock Canal boundary line 384.80 feet to the West right-of-way line of 800 East Street; thence along said 800 East Street right-of-way line the next 4 calls: South 00°07'16" East 225.47 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the right 34.82 feet through a central angle of 19°56'54", the chord of which bears South 09°51'11" West 34.64 feet to a point of curvature; thence along an arc of a 100 foot radius curve to the left 34.82 feet through a central angle of 19°56'54", the chord of which bears South 09°51'11" West 34.64 feet; thence South 00°07'16" East 200.00 feet to a point of curvature; thence along an arc of a 15.00 foot radius curve to the right 23.59 feet through a central angle of 90°07'16", the chord of which bears South 44°56'22" West 21.24 feet to the point of beginning. Area = 7.927 acres.

SUBJECT TO restrictions, covenants; easements, and rights-of-way of record, visible by inspection or otherwise.

**PHASE III**

The following described tract of land situated in Utah County, State of Utah, to wit:

COMMENCING at a point in the North right-of-way line of 1200 North Street, said point is also located South 89°54'39" West along the section line 328.07' and North 33.00' from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along said 1200 North right-of-way line the next 4 calls: South 89°54'39" West 488.66 feet to a point of curvature; thence along a 100.00 foot radius curve to the right 34.82 feet through a central angle of 19°56'54", the chord of which bears North 80°06'54" West 34.64 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the left 34.82 feet through a central angle of 19°56'54", the chord of which bears North 80°06'54" West 34.64 feet; thence South 89°54'39' West 200.00 feet to a point of curvature; thence along a 15.00 foot radius curve to the right 23.59 feet through a central angle of 90°05'21", the chord of which bears North 45°02'40" West 21.23 feet to a point in the East right-of-way line of Research Way; thence along said Research Way right-of-way line the next 4 calls: North 187.85 feet to a point of curvature; thence along an arc of a 100.00 foot radius curve to the left 22.41 feet through a central angle of 12°50'19" the chord of which bears North 06°25'09" West 22.36 feet to a point of curvature; thence along a 100.00 foot radius curve to the right 22.41 feet through a central angle of 12°50'19", the chord of which bears North 06°25'09" West 22.36 feet; thence North 452.87 feet to the South boundary line of Lot 2, Plat "C", of the Timpanogos Research and Technology Park; thence West along said Lot 2 boundary line 164.19 feet to the East corner of Lot 1, Plat "C", Timpanogos Research and Technology Park; thence South 45°00'00" East along said Southwest boundary line of Lot 1 250.00 feet to the South boundary line of said Lot 1; thence East along said South boundary line of Lot 1 226.27 feet to the Southeast boundary line of said Lot 1; thence North 45°00'00" East along said Southeast boundary line 218.52' to the South right-of-way line of Timpanogos Parkway; thence along said Timpanogos Parkway right-of-way line and along a 265.00 foot radius curve to the left 55.08 feet through a central angle of 11°54'34", the chord of which bears South 77°46'54" East 54.98 feet to the West boundary line of Parcel 4, Phase I, Plat "K", of the Timpanogos Research and Technology Park; thence South 00°07'16" East along said boundary line 677.09 feet to the point of beginning. Area = 10.917 acres.

LESS AND EXCEPTING THEREFROM a portion of Lots 2 and 3, Plat "G", Timpanogos Research & Technology Park Subdivision, according to the Official Plat thereof on file and of record in the Utah County Recorder's Office being described as follows:

Commencing at the Southeast corner of Lot 2, Plat "G", Timpanogos Research & Technology Park, Subdivision, Orem, Utah, as shown on record in the Office of the Utah County Recorder, said point being located South 89°54'39" West along the Section line 328.07 feet and North 33.00 feet from the Southeast corner of Section 2, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along the Northerly boundary line of 1200 North Street as follows: South 89°54'39" West 488.66 feet, along the arc of a 100.00 foot radius curve to the right 34.82 feet (chord bears North 80°06'54" West 34.64 feet), along the arc of a 100.00 foot radius curve to the left 34.82 feet (chord bears North 80°06'54" West 34.64 feet), South 89°54'39" West 200 feet, along the arc of a 15.00 foot radius curve to the right 23.59 feet (Chord bears North 45°02'40" West 21.23

feet); thence along the Easterly boundary line of Research Way as follows: North 187.85 feet, along the arc of a 100.00 foot radius curve to the left 22.41 feet (chord bears North 06°25'09" West 22.36 feet), along the arc of a 100.00 foot radius curve to the right 22.41 feet (chord bears North 06°25'09" West 22.36 feet), North 452.87 feet; thence East 164.19 feet; thence South 45°00'00" East 250.00 feet; thence East 226.27 feet; thence South 66°45'53" East 227.19 feet; thence South 00°07'16" East 444.58 feet to the point of beginning.

SUBJECT TO restrictions, covenants, easements, and rights-of-way of record, visible by inspection or otherwise.

TIMPANOGOS RESEARCH & TECHNOLOGY PARK  
A Planned Unit Development

PHASE I

LOT #/ADDRESS; PERCENTAGE OF UNDIVIDED OWNERSHIP INTEREST IN THE  
COMMON AREAS, PERCENTAGE MEMBERSHIP INTEREST IN THE  
ASSOCIATION AND VOTING PERCENTAGE; AND SIZE IN RENTABLE SQUARE  
FOOTAGE

Lot A 1501-1599 North Technology Way (Odd Numbers Only) Orem, Utah 84097	3.91956%	37,188 sq. ft.
Lot B 600-699 East Technology Avenue Orem, Utah 84097	4.29025%	40,705 sq. ft.
Lot C 500-599 East Technology Avenue Orem, Utah 84097	7.57889%	71,907 sq. ft.
Lot D 1500-1598 North Technology Way (Even Numbers Only) Orem, Utah 84097	4.61814%	43,816 sq. ft.
Lot E 700-749 East Technology Avenue Orem, Utah 84097	4.45425%	42,261 sq. ft.
Lot F 750-799 East Technology Avenue Orem, Utah 84097	4.61825%	43,817 sq. ft.
Lot G 500-599 East Timpanogos Circle Orem, Utah 84097	10.81030%	102,566 sq. ft.
Lot H 600-699 East Timpanogos Circle Orem, Utah 84097	7.16236%	67,955 sq. ft.

Lot J 1401-1499 North Research Way (Odd Numbers Only) Orem, Utah 84097	7.27260%	69,001 sq. ft.
Lot K 1301-1399 North Research Way (Odd Numbers Only) Orem, Utah 84097	12.31445%	116,837 sq. ft.
Lot L 600-699 East Timpanogos Parkway (Odd Numbers Only) Orem, Utah 84097	3.72784%	35,369 sq. ft.
Lot M 701-799 East Timpanogos Parkway (Odd Numbers Only) Orem, Utah 84097	5.76604%	54,707 sq. ft.
Lot Q 1201-1299 North Research Way (Odd Numbers Only) Orem, Utah 84097	15.63798%	148,370 sq. ft.
Lot S 500-599 East Timpanogos Parkway Orem, Utah 84097	3.70307%	35,134 sq. ft.
Lot W 1201-1249 North 800 East (Odd Numbers Only) Orem, Utah 84097	4.12604%	39,147 sq. ft.
<b>TOTAL</b>	<u>100.00%</u>	<u>948,780 sq. ft.</u>

**EXHIBIT "D"**

**BYLAWS  
OF  
TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC.  
(A Utah non-profit corporation)**

**ARTICLE 1. NAME AND LOCATION**

The name of the corporation is TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC., Utah non-profit corporation, hereinafter referred to as the "*Association*." The principal office of the Association shall be located at 1501 North Technology Way, Building A, Suite 3300, Orem, Utah 84097.

**ARTICLE 2. DEFINITIONS**

The terms defined in Article 1 of the Declaration of Covenants, Conditions, and Restrictions for Timpanogos Research & Technology Park (A Planned Unit Development), as amended (the "*Declaration*"), shall apply to these Bylaws.

**ARTICLE 3. MEETINGS OF MEMBERS**

**3.1 Annual Meetings.** The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 1:00 p.m., or at such other date and time appointed by the Board upon ten (10) days advance notice of such date and time to the Members. If the day of the annual meeting of the Members is a Saturday, Sunday, or legal holiday, the meeting will be held at the same hour on the following day which is not a Saturday, Sunday, or legal holiday.

**3.2 Special Meetings.** Special meetings of the Members may be called at any time by the Board of Trustees or at least fifty percent (50%) of the votes of all of the Members.

**3.3 Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association, by mailing a copy of such notice, postage prepaid, at least ten (10) days but not more than sixty (60) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address 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.

**3.4 Place of Meetings.** The Board of Trustees may designate any place within or outside the State of Utah as the place of meeting for any annual meeting or for any special meeting. If no designation is made, the place of meeting shall be the principal office of the Association.



**3.5 Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the votes of all of the Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation of the Association, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

**3.6 Voting.** The Association shall have a total voting percentage of one hundred percent (100%). The voting percentage appurtenant to each Lot and membership shall be as set forth in Exhibit "C" attached to the Declaration. Unless specifically stated otherwise in the Articles of Incorporation of the Association, the Declaration, or these Bylaws, any and all actions of the Association requiring approval of the Lot Owners shall require at least a majority of the voting percentage of the Lot Owners. Multiple record Owners of a single Lot shall be unanimous in their single vote for such Lot, otherwise such Lot shall not be represented by its vote.

**3.7 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 of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of its Lot.

## **ARTICLE 4. BOARD OF TRUSTEES**

**4.1 General Powers.** The business and affairs of the Association shall be managed by its Board of Trustees as provided in these Bylaws and the Declaration. The Board of Trustees may adopt such rules and procedures for the conduct of its meetings and the management of the Association as it deems proper. The Board of Trustees shall have power to:

4.1.1 Adopt and publish Rules and Regulations governing the operation and use of the Common Areas, and the personal conduct of the Members and their employees, agents, lessees/tenants, guests, customers, licensees, and invitees thereon, and to establish penalties for the violation thereof;

4.1.2 Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation of the Association, or the Declaration;

4.1.3 Employ a Manager, an independent contractor, or such other employees or agents as it may deem necessary or prudent, and to prescribe their duties; and

4.1.4 Employ accountants, general contractors, attorneys, title officers, or such other professionals as may be deemed necessary or prudent and to prescribe their duties.

**4.2 Duties.** It shall be the duty of the Board of Trustees to:

4.2.1 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 at least twenty-five percent (25%) of the Members;

4.2.2 Supervise all agents and employees of this Association, and to see that their duties are properly performed;

4.2.3 As more fully provided in the Declaration, to:

4.2.3.1 Fix the amount of the Assessments;

4.2.3.2 Send to each Lot Owner written notice of each Assessment;

4.2.3.3 Collect the Assessments; and

4.2.3.4 Pursue the collection of unpaid Assessments, judicially or otherwise, and/or execute, record, enforce and foreclose the Lien against any Lot for which Assessments are not paid;

4.2.4 Issue, upon written demand by any person or entity, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board of Trustees for the issuance of such certificates. A certificate shall be conclusive evidence of such payment;

4.2.5 Procure and maintain adequate liability and hazard insurance on property managed, controlled, and/or owned by the Association, as it may deem appropriate, as more fully described in the Declaration;

4.2.6 Cause all agents or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and as provided in the Declaration; and

4.2.7 Cause the Common Areas to be maintained.

**4.3 Elections.** Election to the Board of Trustees shall be by written ballot. At such election the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of this Declaration. Any one Member may be elected to fill two or more of the Trustee positions. The Member(s) receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**4.4 Number.** The affairs of this Association shall be managed by a Board of three (3) Trustees; provided, however, that any one Member may be elected to fill two or more of the Trustee positions, and any elected Member may appoint an individual to serve on behalf of such Member, in the sole discretion of such Member.

**4.5 Term of Office.** The Trustees of the Association shall hold office for a period of one (1) year, unless he/she shall sooner resign, or shall be removed, or otherwise disqualified from serving.

**4.6 Regular Meetings.** Regular meetings of the Board of Trustees shall be held monthly, 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 Saturday, Sunday, or legal holiday, then that meeting shall be held at the same time on the following day which is not a Saturday, Sunday, or legal holiday.

**4.7 Special Meetings.** Special meetings of the Board of Trustees may be called by the President of the Association or by any Trustee. The Secretary of the Association shall give notice of the time, place, and purpose or purposes of each special meeting to each Trustee by written notice at least three (3) business days before the meeting.

**4.8 Quorum.** A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business, but less than a quorum may adjourn any meeting from time to time until a quorum shall be present, whereupon the meeting may be adjourned without further notice. Every act or decision done or made by a majority of the Trustees present at a duly held meeting shall be regarded as the act of the Board. At any meeting at which every Trustee shall be present, even though without any notice, any business may be transacted.

**4.9 Manner of Acting.** At all meetings of the Board of Trustees, each Trustee shall have one (1) vote. Unless otherwise specifically stated otherwise in the Articles of Incorporation of the Association, the Declaration, or these Bylaws, the act of a majority present at a meeting shall be the act of the Board of Trustees, provided a quorum is present.

**4.10 Vacancies.** A vacancy in the Board of Trustees shall be deemed to exist in case of death, resignation, or removal of any Trustee, or if the authorized number of Trustees be increased, or if the Members fail at any meeting of Members at which any Trustee is to be elected to elect the full authorized number to be elected at that meeting.

**4.11 Removal.** Any Trustee may be removed from the Board with or without cause, by a majority vote of the Members of the Association. In the event of the death, resignation, or removal of a Trustee, such Trustee's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of its/his/her predecessor.

**4.12 Resignation.** A Trustee may resign at any time by delivering written notification thereof to the President of the Association. Resignation shall become effective upon its acceptance by the Board of Trustees; provided, however, that if the Board of Trustees has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth (10<sup>th</sup>) day be deemed accepted.

**4.13 Presumption of Assent.** A Trustee of the Association who is present at a meeting of the Board of Trustees at which action on any Association matter is taken shall be presumed to have assented to the action taken unless its/his/her dissent shall be entered in the minutes of the meeting or unless it/he/she shall file its/his/her written dissent to such action with the entity or person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the Secretary of the Association immediately after

the adjournment of the meeting. Such right to dissent shall not apply to a Trustee who voted in favor such action.

**4.14 Compensation.** By resolution of the Board of Trustees, the Trustees may be paid their expenses, if any, of attendance at each meeting of the Board of Trustees, and may be paid a fixed sum for attendance at each meeting of the Board of Trustees or a stated salary as Trustee. No such payment shall preclude any Trustee from serving the Association in any other capacity and receiving compensation therefore.

**4.15 Emergency Power.** When, due to a natural disaster or death, a majority of the Trustees are incapacitated or otherwise unable to function as Trustees, the remaining members of the Board of Trustees shall have all the power necessary to function as a complete Board, and, for the purpose of doing business and filling vacancies, shall constitute a quorum until such time as all Trustees can attend or vacancies can be filled pursuant to these Bylaws.

**4.16 Informal Resolution of Board of Trustees.** Unless otherwise provided by law, any action required to be taken at a duly authorized meeting of the Board of Trustees may be taken without a formal meeting, provided the resolution is placed in writing in the Minute Book of the Association, setting forth the action taken by the Trustees, and the same is signed by the requisite number of members of the Board of Trustees entitled to vote with respect to the subject-matter thereof. Unless specifically stated otherwise in the Articles of Incorporation of the Association, the Declaration, or these Bylaws, such resolution shall be effective as any resolution passed by a majority of the members of the Board of Trustees at any lawful meeting duly authorized and called.

## **ARTICLE 5 OFFICERS**

**5.1 Enumeration of Officers.** The Officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer.

**5.2 Election of Officers.** The election of Officers shall be by and from the Board of Trustees, be it a Member or an individual appointed by an elected Member.

**5.3 Multiple Offices.** Any Member or individual appointed by an elected Member may hold two or more offices, and the offices of Secretary and Treasurer shall be held by the same entity or person.

**5.4 Duties.** The duties of the Officers are as follows:

**5.4.1 President.** The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Association and of the Board of Trustees. The President shall see that orders of the Board of Trustees are carried out; shall sign all contracts and other written instruments; shall co-sign all checks and promissory notes of the Association; and shall have all of the general powers and duties that are usually vested in the office of President of a similar type association.

5.4.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of the President's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him/her by the Board of Trustees.

5.4.3 Secretary/Treasurer. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Association and the Board of Trustees; serve notice of meetings of the Board of Trustees 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 of Trustees. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, and shall disburse such funds as directed by the Board of Trustees; shall co-sign all checks and promissory notes of the Association; keep proper books of account; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its annual meeting and deliver a copy of each to the Members; and shall perform such other duties as required by the Board of Trustees.

**5.5 Subordinate Officers.** The Board of Trustees may from time to time appoint such other Officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time delegate to any Officer or agent the power to appoint any such subordinate Officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate Officers need not be Members or Trustees of the Association.

**5.6 Removal.** Any Officer may be removed by the Board of Trustees at any time, for or without cause. In the event of the death, resignation, or removal of an Officer, such Officer's successor shall be selected by the Board of Trustees and shall serve for the unexpired term of its/his/her predecessor.

**5.7 Resignation.** Any Officer may resign at any time by delivering a written resignation to the President or the Board of Trustees. Resignation shall become effective upon its acceptance by the Board of Trustees; provided, however, that if the Board of Trustees has not acted thereon within ten (10) days from the date of its delivery, the resignation shall upon the tenth (10<sup>th</sup>) day be deemed accepted.

**5.8 Compensation.** An Officer may receive compensation for services rendered to the Association as an Officer and may be reimbursed for expenses incurred in performance of his duties as an Officer to the extent such compensation expenses are reasonable and approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in the capacity as an Officer.

## ARTICLE 6. BOOKS AND RECORDS

The books, records, and papers of the Association shall be subject to inspection by any Member upon reasonable request and during reasonable business hours. A copy of the Declaration, the Articles of Incorporation of the Association, 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 obtained at reasonable cost.

## **ARTICLE 7. CONTRACTS, LOANS, CHECKS, AND DEPOSITS**

**7.1 Contracts.** The Board of Trustees may authorize any Officer or Officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

**7.2 Loans.** No loans or advances shall be contracted on behalf of the Association, no negotiable paper or other evidence of its obligation under any loan or advance shall be issued in its name, and no property of the Association shall be mortgaged, pledged, hypothecated, or transferred as security for the payment of any loan, advance, indebtedness or liability of the Association, unless and except as authorized by unanimous consent of the Board of Trustees. Any such authorization may be general or confined to specific instances.

**7.3 Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Trustees may select, or as may be selected by any Officer or agent authorized to do so by the Board of Trustees.

**7.4 Checks and Drafts.** All notes, drafts, acceptances, checks, endorsements, and evidences of indebtedness of the Association shall be signed by such Officer or Officers or such agent or agents of the Association and in such manner as the Board of Trustees from time to time may determine. Endorsements for deposit to the credit of the Association in any of its duly authorized depositories shall be made in such manner as the Board of Trustees from time to time may determine.

## **ARTICLE 8. ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual, monthly, or other periodic Assessments, Special Assessments, or Reimbursement 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 ten (10) days after the due date, the Assessment shall bear interest from the date of delinquency until paid in full at the rate of one and one-half percent (1½%) per month, assessed and compounded daily, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the Lien against the Lot, and interest, costs, and reasonable attorneys' 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 Areas, abandonment of its Lot, or otherwise.

## ARTICLE 9. AMENDMENTS AND CONFLICTS

9.1 These Bylaws may be amended, at an annual or special meeting of the Members, by at least two-thirds (2/3s) of the vote of the Members.

9.2 In the event of a conflict in any of the provisions of any of the following listed documents of the Association, such documents shall govern or control in the following order or preference: (a) the Declaration; (b) the Articles of Incorporation of the Association; (c) the Bylaws; and (d) the Rules and Regulations.

## ARTICLE 10. INDEMNIFICATION

**10.1 Indemnification.** No Officer or Trustee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Officer or Trustee performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each entity or person, and its/his/her shareholders, directors, officers, managers, employees, and other agents, heirs, executors, and administrators, who shall serve at any time hereafter as a Trustee or Officer of the Association from and against any and all claims, judgments, and liabilities to which such entities or persons shall become subject by reason of its/his/her having heretofore or hereafter been a Trustee or Officer of the Association, or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by it/him/her as such Trustee or Officer, and shall reimburse each such party for all legal and other expenses reasonably incurred by it/him/her in connection with any such claim or liability, including power to defend such party from all suits or claims; provided, however, that no such party shall be indemnified against, or be reimbursed for, any expense incurred in connection with any claim or liability arising out of such party's own gross negligence or willful misconduct. The rights accruing to any party under the foregoing provisions of this Section shall not exclude any other right to which such party may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such party in any proper case, even though not specifically provided for herein. The Association, its Trustees, Officers, employees, and agents shall be fully protected in taking any action or making any payment, or in refusing so to do, in reliance upon the advice of counsel.

**10.2 Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board of Trustees and receipt of an undertaking to repay such amounts advanced unless it is ultimately determined that indemnification by the Association is not authorized by this Article or otherwise.

**10.3 Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law, agreement, vote of Members, or otherwise, both as to action in such party's official capacity and as to action in another capacity while holding such office, and shall continue as to an entity or person that has ceased to be a Trustee, Officer, employee, or agent, and shall inure to the benefit of the successors, assigns, heirs, executors, and administrators of such party.

**10.4 Insurance.** The Association may, but is not required to, purchase and maintain insurance on behalf of any entity or person who is or was a Trustee, Officer, employee, or agent of the Association, or is or was serving at the request of the Association as a trustee, officer, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, or other enterprise against any liability asserted against such party and incurred by such party in any such capacity, or arising out of such party's status as such, whether or not the Association would have the power to indemnify such party against liability under the provisions of this Section.

**10.5 Settlement by Association.** The right of any entity or person to be indemnified shall be subject always to the right of the Association by its Board of Trustees, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

**10.6 Payments and Premiums.** Any indemnification payments made, and the insurance premiums for any insurance maintained pursuant to this Article, may constitute a Common Expense of the Association and be paid by way of Assessment against the Owners, as determined in the sole discretion of the Board of Trustees.

## ARTICLE 11. GENERAL PROVISIONS

**11.1 Waiver of Notice.** Whenever any notice is required to be given to any Member or Trustee of the Association under the provisions of these Bylaws, the Articles of Incorporation of the Association, or the Declaration, a waiver thereof in writing signed by the entity or person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute a waiver of notice of such meetings, except where attendance is for the express purpose of objecting to the legality of that meeting.

**11.2 Fiscal Year.** The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

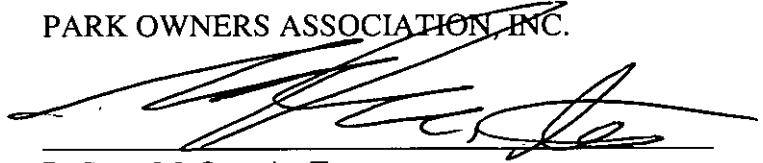
**11.3 No Liability of Members.** Except as provided in these Bylaws and in the Declaration, the Members are not individually or personally liable for the debts or obligations of the Association.

*[Remainder of page intentionally left blank; signature page to follow]*

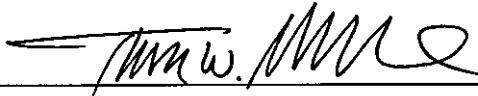


IN WITNESS WHEREOF, we, being all of the Trustees of TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC., Utah non-profit corporation, have hereunto set our hands this 17<sup>th</sup> day of October 2006.

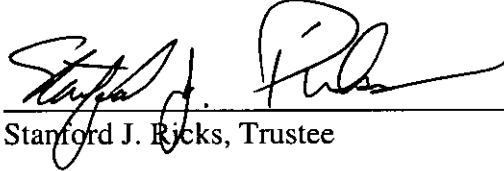
TIMPANOGOS RESEARCH & TECHNOLOGY  
PARK OWNERS ASSOCIATION, INC.



R. Scott McQuarrie, Trustee



Thomas W. Macdonald, Trustee

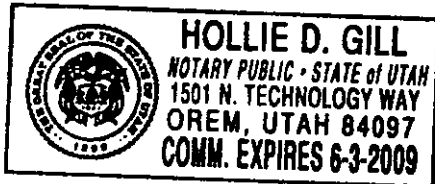


Stanford J. Ricks, Trustee

STATE OF UTAH     )  
                                      :SS.  
COUNTY OF UTAH )

SUBSCRIBED AND SWORN to before me, a Notary Public in and for Utah County, State of Utah, R. Scott McQuarrie, a member of the Board of Trustees of TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC., a Utah non-profit corporation (the "Association"), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Association, and that he executed the same as the act of such Association for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official seal this 17<sup>th</sup> day of October, 2006.

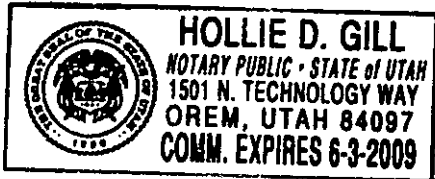


  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH )  
 :SS.  
 COUNTY OF UTAH )

SUBSCRIBED AND SWORN to before me, a Notary Public in and for Utah County, State of Utah, Thomas W. Macdonald, a member of the Board of Trustees of TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC., a Utah non-profit corporation (the "Association"), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Association, and that he executed the same as the act of such Association for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official seal this 17<sup>th</sup> day of October, 2006.

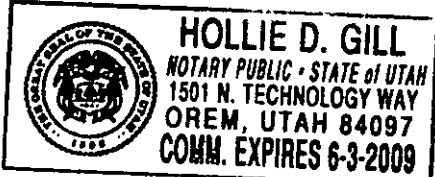


Hollie D. Gill  
NOTARY PUBLIC

STATE OF UTAH )  
 :SS.  
 COUNTY OF UTAH )

SUBSCRIBED AND SWORN to before me, a Notary Public in and for Utah County, State of Utah, Stanford J. Ricks, a member of the Board of Trustees of TIMPANOGOS RESEARCH & TECHNOLOGY PARK OWNERS ASSOCIATION, INC., a Utah non-profit corporation (the "Association"), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Association, and that he executed the same as the act of such Association for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official seal this 17<sup>th</sup> day of October, 2006.



Hollie D. Gill  
NOTARY PUBLIC