

AFTER RECORDING, PLEASE RETURN TO:

Mark Larsen
M&O Holdings, LLC
1803 Laurelhurst Drive
Salt Lake City, Utah 84108

11098740
12/16/2010 04:57 PM \$60.00
Book - 9889 Pg - 8770-8792
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
M & O HOLDING LLC
1803 LAURELHURST DR
SLC UT 84108
BY: ZJM, DEPUTY - MI 23 P.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

OF

THE PLAZA AT 39TH CONDOMINIUMS

THIS DECLARATION (the "Declaration"), is made on the 16th day of December, 2010, of the covenants, conditions and restrictions pertaining to that certain real estate development known as The Plaza at 39th Condominiums, by the Declarant (as defined below) for itself, its successors, grantees and assigns, pursuant to the Utah Condominium Ownership Act codified at § 57-8-1 et seq. of the Utah Code Annotated (the "Act").

RECITALS:

A. The Declarant is M&O HOLDINGS, LLC, a Utah limited liability company and the owner of certain real property in Salt Lake County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Land").

B. Declarant has constructed certain buildings and improvements on the Land in accordance with the plans and drawings set forth in the Plat filed concurrently herewith, prepared and certified by D. Gregg Meyers, of Bingham Engineering, a Utah Registered Land Surveyor.

C. Declarant desires by filing this Declaration and the related Plat to submit the Land and such buildings and other improvements constructed thereon to the provisions of the Act as the Plaza at 39th Condominiums (the "Development").

D. Declarant desires that the individual suites contained in the Development, together with the Common Areas appurtenant thereto, be subject to the covenants, limitations, and restrictions contained herein.

DECLARATION:

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to the Development which, pursuant to the Act, shall be enforceable equitable servitudes, where reasonable, and shall run with the land:

1. Name of the Development. The name by which the Development shall be known is THE PLAZA AT 39TH CONDOMINIUMS.

2. Definitions. The terms used in this Declaration shall have the meaning stated in the Act and as given herein unless the context otherwise requires.

(a) "Act" shall refer to the Utah Condominium Ownership Act, codified at Utah Code Annotated § 57-8-1 et seq., as the same may be amended from time to time.

(b) "Assessments" shall mean the assessments charged by the Management Committee to the Suite Owners to cover the Common Expenses, and such other expenses as are more fully set forth in this Declaration, and include Annual Assessments (as defined in Section 13(a) below) and Special Assessments (as defined in Section 13(b) below).

(c) "Building" shall mean a commercial building previously constructed on the Land.

(d) "Common Areas" shall mean and refer to the Land, excluding the real property upon which each Building sits, but including all exterior walkways, driveways, Parking Areas, landscaped areas, fences, open spaces, and entrances and exits, and in general all other apparatus, installations and other parts of the Development necessary or convenient to the existence, maintenance and safety of the Common Areas or normally in common use.

(e) "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas, taxes and insurance, and all items, things and sums described in the Act that are lawfully assessed against the Suite Owners in accordance with the provisions of the Act, this Declaration, such rules and regulations pertaining to the Suite Owners as the Management Committee may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Management Committee. Common Expenses shall include, by way of illustration and without limiting the generality of the foregoing, costs and expenses of:

(1) Managing the Common Areas, such as overhead, salaries and wages (including employment taxes and fringe benefits) of all personnel employed by the Management Committee and/or customary management fees paid to the Property Manager, or any other person or entity;

(2) Insurance authorized by this Declaration or otherwise deemed appropriate by the Management Committee to protect the Common Areas, the Management Committee and the Property Manager, and their respective employees, agents or representatives;

- (3) Real property taxes assessed against the Common Areas;
 - (4) Snow removal from the Common Areas, including the Parking Areas;
 - (5) Cleaning, sweeping, removing trash and otherwise maintaining the Common Areas in good appearance;
 - (6) Costs incurred in connection with the landscaping, yard care and related maintenance of the Common Areas;
 - (7) Capital improvements to and other costs and expenses incurred in constructing and installing additions or replacements to the Common Areas;
 - (8) Utilities that are utilized primarily for the benefit of the Common Areas and which are separately metered and billed to the Management Committee (all other utilities are to be billed to and paid for by the Suite Owners);
 - (9) The cost incurred by the Management Committee in repairing, replacing, improving, upgrading, or otherwise dealing with improvements in the Parking Areas or rights of way for the benefit of the Development such as the repair or upgrading of curb and gutter, sidewalks, or asphalt in the Parking Areas;
 - (10) Legal, accounting and other services incurred by the Management Committee in performing its duties and enforcing this Declaration; and
 - (11) Any costs and expenses incurred by the Management Committee in the good faith belief that the same are Common Expenses.
- (f) "Declarant" shall mean M&O HOLDINGS, LLC, a Utah limited liability company.
- (g) "Development" shall mean and include the Land, all buildings, improvements, and structures thereon, and all easements, rights and appurtenances belonging thereto.
- (h) "Majority of Suite Owners" shall mean and refer to the owners of Suites holding more than fifty percent (50%) of the Common Areas, and therefore holding more than fifty percent (50%) of the voting rights of all Suite Owners.
- (i) "Management Committee" shall mean and refer to a three (3) member committee that has the authority to manage the Development, as more fully set forth in this Declaration.

(j) "Mortgage" shall mean a mortgage or deed of trust held by a third party Mortgagee and secured any Suite in the Development.

(k) "Mortgagee" shall mean any lender holding a mortgage against any Suite in the Development.

(l) "Ownership Interest" shall mean an interest in each Suite and non-exclusive rights to use the Common Areas, including the Parking Areas.

(m) "Parking Areas" shall mean a portion of the Land designated for the parking of vehicles (as more fully designated on the Plat), over which all Owners shall have an easement, and upon which vehicular travel and parking shall take place.

(n) "Percentage Share" shall mean the share of each Suite Owner in the Assessments assessed by the Management Committee, based upon such Suite Owner's percentage ownership in the Common Areas.

(o) "Plat" shall mean and refer to the condominium plat of the Development recorded as Entry No. 11098739 in the Office of the Salt Lake County Recorder, State of Utah, on December 16, 2010.

(p) "Property Manager" shall mean a person or entity hired by the Management Committee to manage the Development.

(q) "Suite" shall mean and refer to one of the Suites designated as a Suite on the Plat. Mechanical equipment and appurtenances located within any one Suite or located without said Suite but designated and designed to serve only that Suite, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, fixtures, and the like, shall be considered part of the Suite, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Suite and serving only the Suite, and any other property of any kind, including fixtures and appliances within any Suite, which are removable shall be considered part of the Suite.

(r) "Suite Owner" or "Owner" shall mean the person or persons owning a Suite in fee simple as shown in the records of the County Recorder of Salt Lake County, Utah. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Suite Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(s) Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

3. Submission to Ownership. Declarant hereby submits the Land, Buildings, Common Areas and all improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act for purposes of facilitating the ownership of individual Suites, and this Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of Declarant that the provisions of the Act shall apply to the Development.

4. Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Development shall be enforceable equitable servitudes which shall run with the Land and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns, and upon all Suite Owners, their grantees, mortgagees, successors, heirs, executors, administrators, devisees and assigns.

5. Description of Development.

(a) Description of Land. The Land is that tract or parcel, more particularly described in Exhibit "A" attached hereto.

(b) Description of Improvements. The significant improvements contained or to be contained in the Development include the Buildings, landscaping, Parking Areas, and other facilities located substantially as shown on the Plat.

(c) Description and Legal Status of Suites. The Plat shows the Suite number of each Suite, and its location. All Suites, of whatever type, shall be capable of being independently owned. Without limitation, a Suite shall include any finishing material applied or affixed to the interior surfaces of the interior walls and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the Suite and servicing only that Suite.

(d) Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall consist of those areas and facilities described in Section 2(f), and constitute in general all of the Land, except those portions upon which a Building sits. Without limiting the generality of the foregoing, the Common Areas shall include the following:

- (1) All of the Land;
- (2) The Parking Areas, lawns, shrubs, and other landscaped areas, and sidewalks;
- (3) Any common utility pipe or line or system servicing more than a single Suite, and all ducts, wires, conduits, and other accessories used therewith;
- (4) All other parts of the Development necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas on the Plat; and

(5) All repairs and replacements of any of the foregoing.

6. Statement of Purpose and Restriction on Use.

(a) Purpose. The purpose of the Development is to provide commercial occupancy for Suite Owners and their tenants and guests, all in accordance with the provisions of the Act.

(b) Restrictions on Use. The Suites and Common Areas shall be used and occupied as follows:

(1) Each of the Suites shall be occupied by the Suite Owner, its employees, guests or tenants as a commercial business and for no other purpose.

(2) The Parking Areas shall be used exclusively for the parking of vehicles of Suite Owners, their employees, guests or tenants. No mobile homes, boats, snowmobiles or campers shall be parked in the Parking Areas. Except with the written consent of the Management Committee, no repairs to automobiles or trucks or changing oil on any vehicle, trailer or boat may be performed in the Development. Each Suite Owner shall use only parking stalls assigned to such Suite Owner by the Management Committee. The Management Committee shall have the right (A) to report violating vehicles to the appropriate authorities and ask that the violating vehicles be ticketed; (B) to tow vehicles that are in violation of this provision, in accordance with applicable local law; and (C) to establish such additional and further rules and regulations as it shall deem reasonable and appropriate to govern the Parking Areas.

(3) The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Suite Owners.

(4) Nothing shall be done or kept in any Suite or in the Common Areas that will increase the rate of insurance on the Buildings or contents thereof beyond that customarily applicable for commercial use, or will result in the cancellation of insurance on the Buildings, or the contents thereof, without the prior written consent of the Management Committee. No Suite Owner shall permit anything to be done or kept in his Suite or in the Common Areas that violates any law, ordinance, or regulation of any governmental authority. No Suite Owner or guest shall use or store any hazardous material or substance in the Development, except as approved by the Management Committee.

(5) No noxious, offensive, or illegal activity shall be carried on or permitted in any Suite or in the Common Areas, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Suite Owners or occupants.

(6) Nothing shall be done in any Suite or in, on, or to the Common Areas that will impair the structural integrity of the Buildings or any part thereof or that would structurally change the Buildings or any part thereof except as is otherwise provided herein.

(7) No animals or pets may be kept within the interior of a Suite.

(8) The Common Areas shall be kept free and clear of all rubbish, debris, and other unsightly materials.

(9) No Owner shall violate the rules and regulations regarding use of the Suites and of the Common Areas as adopted from time to time by the Management Committee.

(10) All Owners shall conform to requirements of Murray City, Utah for zoning.

(11) No Common Area shall be subdivided, sold, or otherwise conveyed without approval of Murray City, Utah.

7. Person to Receive Service of Process. The person to receive service of process in the cases provided herein or in the Act is Mark B. Larsen, whose address is 1803 Laurelhurst Drive, Salt Lake City, Utah 84108.

8. Ownership and Use.

(a) Ownership of a Suite. Each Suite Owner shall be entitled to the exclusive ownership and possession of its Suite.

(b) Nature of and Restrictions on Ownership and Use. Each Suite Owner shall have and enjoy the rights and privileges of fee simple ownership of such Suite. There shall be no requirements concerning who may own Suites, it being intended that they may and shall be owned as any other property by persons, corporations, partnerships, limited liability companies or trusts and in the form of common tenancy. All Suites are to be sold as commercial condominium Suites. All Suite Owners, their tenants and other occupants or users of the Development, shall be subject to the Act, this Declaration, and all rules and regulations of the Management Committee.

(c) Prohibition Against Subdivision of Suite. No Suite Owner, by deed, plat or otherwise, shall subdivide or attempt to cause the ownership of such Suite to be separated into physical tracts or parcels smaller than the whole Suite as shown on the Plat.

(d) Ownership of Common Areas. The Common Areas contained in the Development are described and identified in this Declaration and on the Plat. The

Common Areas shall be jointly owned by the Suite Owners. Each Suite Owner will have an undivided interest in the Common Areas with all other Suite Owners. Each Suite Owner's ownership percentage of the Common Areas shall be based on the total square foot size of such Suite Owner's Suite, as more fully set forth on Exhibit "B." The Common Areas shall be used only in a manner that is consistent with their community nature and with the use restrictions applicable to the Suites contained in the Development.

(e) Use of Common Areas. Each Suite Owner may use the Common Areas in accordance with the purpose for which they are intended, but subject to this Declaration, and the rules and regulations of the Management Committee. This right of use shall be appurtenant to and run with each Suite.

(f) Use of Parking Areas. The Parking Areas shall be available to the Suite Owners, their tenants and guests, for parking purposes. The Management Committee may, by written instrument, designate specific parking stalls for specific Suites; and in the absence of any such written parking allocation, the Parking Areas shall be generally available to all Suite Owners, their tenants and guests, on a first come, first served basis.

9. Voting - Multiple Ownership. The vote attributable to and exercisable in connection with a Suite shall be as set forth on the attached Exhibit "B," and is based on the principal of one vote for one one-hundredth of one percent (.01%) of each Suite Owner's Percentage Share. In the event there is more than one Owner of a particular Suite, the vote relating to such Suite shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Suite concerned unless an objection is immediately made by another Owner of the same Suite. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

10. Management.

(a) Management by Management Committee. The business, property and affairs of the Development shall be managed, operated and maintained by the Management Committee. The Management Committee shall be composed of three (3) members, elected by the Suite Owners. Cumulative voting shall be allowed in connection with the election of members of the Management Committee. The individuals to serve as the initial Management Committee shall be Mark B. Larsen, Owen Farnsworth and Craig B. Larsen. Mark B. Larsen is hereby designated as the Chairman of the Management Committee (the "Chairman"). The Management Committee, acting by majority vote, shall have, and it is hereby granted, the following authority and powers:

(1) The authority to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas, provided that work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or decor of a Suite must be repaired;

(2) The authority for the Chairman to execute and to record any amendment to the Declaration or Plat approved by the Suite Owners in accordance with this Declaration;

(3) The authority for the Chairman to enter into contracts that in any way concern the Development;

(4) The power and authority to convey or transfer any interest in the Common Areas;

(5) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property;

(6) The power and authority to add any interest in real property to the Development, so long as such action complies with the Act and any applicable ordinances of Murray City;

(7) The power to sue on behalf of the Suite Owners;

(8) The power and authority to borrow money;

(9) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Management Committee in carrying out its functions or to insure that the Development is maintained and used in a manner consistent with the interests of the Suite Owners;

(10) The power and authority to set and collect Assessments from the Suite Owners; and

(11) The power and authority to perform any other acts and to enter into any other transactions that may be reasonably necessary for the Management Committee to perform its management functions, including the power to collect, enforce, and place liens on Suites for delinquent Assessments.

(b) Reliance on Signed Instrument. Any instrument executed by the Chairman of the Management Committee reciting facts that, if true, would establish the Management Committee's power and authority to accomplish through such instrument the acts purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

(c) Responsibility. The Management Committee shall be responsible for the control, operation, and management of the Development and the Common Areas in accordance with the provisions of the Act, this Declaration, and all agreements and

determinations lawfully made and entered into by the Management Committee.

(d) Property Manager. The Management Committee may, through a professional Property Manager or other manager, carry out any of its functions that are properly the subject of delegation. Any Property Manager so engaged shall be an independent contractor and not an agent or employee of the Management Committee, shall be responsible for managing the Development for the benefit of the Management Committee, and shall, to the extent permitted by law and the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the Development that may be entered into by the Management Committee shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one-year periods, and shall provide that such management agreement may be terminated with or without cause by either party upon not more than thirty (30) days written notice, and without any payment of a termination fee.

(e) Meetings of Management Committee. The Management Committee shall meet as often as necessary, but at least annually, to set the Annual Assessments and to ensure that the Development is managed properly. Notice of any meeting of the Management Committee shall be delivered to each member of the Management Committee not less than ten (10) days in advance of such meeting. All members of the Management Committee must be present at any Management Committee meeting in order to conduct business.

(f) Meetings of Suite Owners. Upon the request of any Suite Owner or upon the request of the Chairman of the Management Committee, the Suite Owners shall meet at such place as shall be designated by the Chairman. Notice of any meeting of Suite Owners shall be delivered to each Suite Owner not less than ten (10) days in advance of such meeting. A Majority of Suite Owners shall constitute a quorum at all Meetings of Suite Owners, and no business shall be conducted at such meeting in the absence of a quorum.

11. Easements.

(a) Each Suite shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas located near the boundaries of such Suite and for telephone, cable, electrical and gas service, or other utility services to adjacent Suites in the same Building. The Suites are also subject to a right of entry in favor of the Management Committee as provided in Section 20 below. The Common Areas are subject to such utility and other easements as are reasonably necessary for the development and operation of the Development, including any expansion of the Development, and for the repair and ongoing maintenance of the water, sewer, and other utilities that service any existing Suites. Each Suite shall be subject to a utility easement for the repair and maintenance of utilities, whether or not such easement is reflected on the Plat.

(b) In the event that, by reason of the construction, reconstruction, repair, settlement, movement or shifting of any part of a Building, any part of the Common Areas encroaches or shall hereafter encroach upon any part of any Suite, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Suite and the Common Areas, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement or any encroachment be created in favor of any Suite Owner or in favor of the Common Areas if such encroachment occurred due to the willful misconduct of such Suite Owner or Owners.

(c) The Management Committee shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform its duties and functions under this Declaration.

12. Change in Ownership. The Management Committee shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Suite owned by it. In the event of any transfer of a fee or undivided fee interest in a Suite either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Management Committee may for all purposes act and rely on the information concerning Owners and Suite ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Suite or Suites obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Suite owned by such person unless the Management Committee is otherwise advised in writing.

13. Assessments.

(a) Annual Assessments. In accordance with Section 17, below, every Suite Owner shall pay an annual Assessment in the amount of its Percentage Share of the Common Expenses, as set forth on the attached Exhibit "B" (the "Annual Assessment"). Payment thereof shall be in such amounts and at such times as the Management Committee may determine. There shall be a lien for nonpayment of Annual Assessments or any other assessment set forth herein, all as provided by the Act. In addition, such lien shall include a \$100.00 filing and processing fee (the "Filing and Processing Fee") assessable to the violating Suite Owner. The Management Committee shall have the authority to place liens (without providing prior notice to the violating Suite Owner) upon any Suite for which an Assessment has not been paid within sixty (60) days after its due date.

(b) Special Assessments for Capital Improvements. In addition to Annual Assessments, the Management Committee may levy, in any Assessment year, a special assessment (a "Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and

personal property related thereto provided that any such Special Assessment must be approved in advance by a Majority of Suite Owners.

(c) Payment Address. All Assessments shall be made payable to: "The Plaza at 39th Management Committee" and shall be sent to Mark B. Larsen, 1803 Laurelhurst Drive, Salt Lake City, Utah, 84108, or at such other address as may be hereafter designated by the Management Committee in writing.

14. Destruction or Damage. In the event of destruction or damage of part or all of the Common Area improvements, the proceeds of the insurance maintained by the Management Committee shall be utilized to repair or reconstruct the damaged or destroyed improvements, and if such insurance proceeds are insufficient to complete the repairs, all of the Suites shall be assessed with a Special Assessment for any deficiency on the basis of their respective Percentage Shares.

15. Taxes. It is understood that under the Act each Suite is deemed a parcel and subject to separate assessment and taxation by each assessing authority and special district for all types of taxes authorized by law. Each Suite Owner will pay and discharge any and all taxes that may be assessed against its Suite. With respect to any taxes assessed against the Common Areas, the Suite Owners shall pay the same as Common Expenses through their Annual Assessments.

16. Insurance. All Suite Owners will provide their own hazard or public liability insurance policy on the Suite owned by them. The Management Committee shall maintain the following insurance on the Common Areas, the cost of which shall be a Common Expense:

(a) Hazard Insurance. A multi-peril type "master" or "blanket" hazard policy covering all of the Common Areas, with the Management Committee listed as the named insured.

(b) Liability Insurance. The liability insurance policy shall have policy limits of at least \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence, and shall include a severability of interest endorsement or its equivalent which shall preclude the insurer from denying the claim of a Suite Owner because of negligent acts of other Suite Owners. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to projects similar to the Development in construction, location and use.

17. Payment of Common Expenses.

(a) Each Suite Owner shall pay its allocated Annual Assessment deemed necessary by the Management Committee to manage and operate the Common Areas, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Suite Owner may have against the Management Committee or against the other Suite Owners. Each installment of the Annual

Assessment shall be due on or before the first day of each month. If a Suite Owner shall fail to pay any installment within five (5) days of the time when the same becomes due, such delinquent Owner shall pay a fifty dollar (\$50.00) late fee (the "Late Fee") and shall pay interest on the delinquent installment at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney fees, incurred in any proceedings brought to collect such unpaid common expenses, whether or not a suit is filed.

(b) The Common Expenses for each year, or portions of the year, shall be deemed to be such aggregate sum as the Management Committee (or the Property Manager) from time to time shall determine, in its judgment, to be paid by all Suite Owners as required to pay all estimated expenses and outlays growing out of or in connection with the maintenance and operation of the Common Areas. The Management Committee may, from time to time, increase or diminish the Annual Assessment amount previously fixed or determined for such year. The Management Committee may include in the cash requirements for any year, any liabilities or items of expense that accrued or became payable in the previous year, or might have been included in the cash requirements for a previous year, but were not included therein; and also any sums the Management Committee may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

(c) The portion payable with respect to each Suite in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such Common Expenses for such year, or portion of year, determined as aforesaid, multiplied by the Percentage Share held by each Suite Owner. Such Assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such other payments and installments as may be required by the Management Committee.

(d) The Management Committee shall have discretionary powers to prescribe the manner of maintaining and operating the Common Areas and to determine the cash requirements of the Common Areas.

(e) Each monthly payment of an Annual Assessment, and each Special Assessment shall be the separate, distinct and personal obligations of the Suite Owner against which the same is assessed at the time the Assessment is made and shall be collectible as such. The amount of any Assessment, whether an Annual Assessment or a Special Assessment, assessed to a Suite, plus interest at 18% per annum, plus the Filing and Processing Fee, Late Fees, and costs, including attorney fees, shall all become a lien upon such Suite upon recordation of a notice of lien as provided by the Act ("Notice of Lien"). Suit to recover a money judgment for unpaid Common Expenses may be maintained without foreclosing or waiving the lien securing the same. Such lien may be foreclosed for nonpayment of Assessments and shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on the Suite in favor of any assessment authority, and special district; and

(2) Encumbrances on the interest of the Suite Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(f) A certificate executed and acknowledged by the Chairman of the Management Committee stating the unpaid Assessments then outstanding with respect to a Suite shall be conclusive upon the Owner of that Suite as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or prospective Owner of a Suite upon request at a reasonable fee not to exceed Fifty Dollars (\$50.00).

(g) A purchaser of a Suite shall be jointly and severally liable with the seller for all unpaid Assessments against the Suite up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

(h) Upon payment of delinquent Assessments concerning which a Notice of Lien has been recorded or other satisfaction thereof, the Management Committee shall cause to be recorded in the same manner as the Notice of Lien a further notice stating the satisfaction and release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale of the Suite by the Management Committee or by a bank or title insurance company authorized by the Management Committee, such sale to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the defaulting Suite Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.

18. Eminent Domain. In the event that eminent domain proceedings are commenced against the Development or any portion thereof, the Management Committee shall determine the manner of response and allocation of any funds obtained in such proceedings in consultation with affected Suite Owners.

19. Maintenance.

(a) Each Suite Owner at its own expense shall keep the exterior and interior of such Suite and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting that may at any time be necessary to maintain the good appearance of such Suite. Except to the extent that the Suite Owner is protected by insurance against such injury, the Suite Owner shall repair all injury or damages to the Suite caused by the act, negligence or carelessness of the Suite Owner or that of any tenant or subtenant, and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work as determined and approved in writing by the Management Committee. In addition to

decorating and keeping the interior of the Suite in good repair, the Suite Owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, appliances, air conditioning and heating equipment, etc., that may be in or connected with the Suite. Without the written permission of the Management Committee first had and obtained, a Suite Owner shall not make or permit to be made any structural alteration in or to such Suite.

(b) In the event an Owner shall fail to maintain the exterior and interior of their Suite and the improvements situated thereon in a manner satisfactory to the Management Committee, the Management Committee, after approval by a Majority of Suite Owners, shall have the right to enter upon said Suite and to repair, maintain and restore the exterior of the Building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the Assessment to which such Suite is subject.

(c) Except as hereinafter provided, the Management Committee shall provide for such maintenance and operation of the Common Areas as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Management Committee shall have no obligation regarding maintenance or care of Suites.

20. Right of Entry. The Management Committee and its duly authorized agents shall have the right to enter any and all of the Suites in case of an emergency originating in or threatening such Suite or any other Suite in the Development, whether or not the Suite Owner or occupant thereof is present at the time. The Management Committee and its duly authorized agents shall also have the right to enter into any and all of said Suites at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas of the Development or for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Suites in the Development; and provided further, that the Suite Owner or occupant affected by such entry shall first be notified thereof if available and if time permits. Any damage done to a Suite by the exercise of the foregoing right of entry shall (to the extent not covered by insurance, if any) be deemed a Common Expense.

21. Administrative Rules and Regulations. The Management Committee shall have the power to adopt and establish such building management and operational rules, including rules relating to the Parking Areas, as it may deem necessary for the maintenance, operation, management and control of the Development. The Management Committee may, from time to time, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Suite Owners, such amendment, alteration or provision shall be taken to be a part of such rules. Suite Owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Suite Owners, tenants, subtenants, guests, or other occupants of the Suites.

22. Obligation to Comply with Declaration, Rules and Regulations. Each Suite Owner, tenant, subtenant or other occupant of a Suite shall comply with the provisions of the Act, this Declaration, and the rules and regulations, all agreements and determinations legally made and/or entered into by the Management Committee, and failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom.

23. Amendment. This Declaration and/or the Plat may be amended (an "Amendment") upon the affirmative vote or approval and consent of Suite Owners holding not less than seventy-five percent (75%) of the Common Areas, and therefore holding not less than seventy-five percent (75%) of the voting rights of all Suite Owners. Any Amendment so authorized shall be accomplished by recordation of an instrument executed by all Suite Owners, including any Suite Owner who did not vote in favor of the Amendment. If any Suite Owner fails to execute a duly approved Amendment, the other Suite Owners may seek a Court order requiring such execution, and all costs and attorneys fees incurred in any such proceeding shall be payable by the Suite Owner or Owners who failed to execute the approved Amendment.

24. Removal of Development from Condominium Act. All of the Owners, by unanimous consent, may remove the Development from the provisions of the Act, by signing and recording an instrument that rescinds this Declaration and removes the Development from condominium ownership under the Act. As a condition to the foregoing, the holders of any liens against any of the Suites must consent or agree, by instruments duly recorded, that their liens shall be transferred to the percentage of the undivided interest of the Suite Owner in the Development. Upon removal of the Development from the provisions of the Act, the Development shall be deemed to be a single parcel, owned in common by the Suite Owners. The undivided interest in the Development owned in common which shall appertain to each Suite Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas.

25. Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Suite Owners for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Suite Owners who collectively make up at least such stated percentage.

26. Severability. The invalidity of any one or more phrases, sentences, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subsection or subsections or section or sections had not been inserted.

27. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

28. Lease of Suites. All lease agreements shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, and that any failure by the lessee to comply with the terms of this Declaration shall be a default under the lease. All leases shall be required to be in writing and a copy of such lease shall be delivered to the Management Committee at least five (5) business days prior to occupancy by the tenant. The leasing Owner shall notify the Management Committee of the name of the lessee of the Suite. In the event of a lease of a Suite, only the tenant and not the Suite Owner shall have the right to the use of the Common Areas while the Suite is leased. In the event insurance costs are increased due to the percentage of rentals, then those Suite Owners who have leased their Suites shall each pay the increased costs of insurance.

29. Legal Description of a Suite. Every conveyance of a Suite and every other instrument affecting title to a Suite may describe that Suite by the number shown on the Plat with the appropriate reference to the Plat and to this Declaration, as each shall appear in the official records of Salt Lake County, Utah, and in substantially the following form:

Suite ___ of The Plaza at 39th Condominiums, as shown in the Condominium Plat for The Plaza at 39th Condominiums, appearing in the Records of the County Recorder of Salt Lake County, Utah, recorded on December 16, 2010, as Entry No. 11098739, together with a 100% undivided interest in the Common Areas of The Plaza at 39th Condominiums.

This conveyance is subject to the provisions of the Declaration of Covenants, Conditions and Restrictions of The Plaza at 39th Condominiums, appearing in the Records of the County Recorder of Salt Lake County, Utah, recorded on December 16, 2010 as Entry No. 11098740.

Such description will be construed to describe the Suite, and the related percentage ownership of the Common Areas, and to incorporate all the rights incident to Ownership of a Suite and all the limitations on such ownership as described in this Declaration.

30. Records. The Management Committee shall make available, upon written request and within a reasonable time, to the Suite Owners, lenders, Mortgagees, and the insurers of any Mortgage on any Suite current copies of the Declaration, and other rules governing the Suite Owners and shall also make available to prospective purchasers current copies of the same. The Management Committee may charge a reasonable fee for photocopying such records.

31. Number and Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

32. Construction and Invalidity. To the extent that any portion of this Declaration is in conflict with federal, state or local laws, regulations, rules or ordinances (collectively referred to as the "Laws"), such shall be construed to give maximum effect to the restriction without

violating the applicable Laws. For example, to the extent the Americans with Disabilities Act allows accommodation animals, then these restrictions shall be interpreted to allow such animals so long as the animal meets the applicable accommodation criteria. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein. This Declaration, notwithstanding any common law rule of construction, shall be construed in favor of Declarant.

33. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

34. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

35. Effective Date. This Declaration shall take effect upon recording.

36. Enforcement. The Management Committee and any aggrieved Suite Owner shall have a right of action either at law or in equity against the Management Committee or any other Suite Owner for any failure by such person to comply with this Declaration, or the provisions of any rules, regulations, agreements, instruments, supplements, amendments or determinations expressly adopted by the Management Committee. In the event that the Management Committee or any Suite Owner fails to comply with this Declaration and it becomes necessary for any of such persons to employ the services of an attorney in connection therewith, either with or without litigation, the non-complying party shall pay to the aggrieved party reasonable attorney fees and, in addition, such costs and expenses as are incurred in enforcing the provisions of this Declaration. Failure by the Management Committee or any Suite Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

37. Rules and Regulations. The Management Committee shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the Development is maintained and used in a manner consistent with the interests of the Suite Owners.

38. Duration. The covenants and restrictions of this Declaration shall run with and bind the Land, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the affirmative vote of a Majority of Suite Owners.

39. Mortgagee Protection.

(a) Subordination of Lien. The lien or claim against a Suite for unpaid Assessments or charges levied by the Management Committee pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments or charges become due. In the event that the State of Utah should enact any statute applicable to the Development with

a provision that would allow a lien for unpaid Assessments or charges to survive foreclosure or exercise of a power of sale, all such Assessments and charges, including Special Assessments, shall after the date of such enactment be made due and payable to the Management Committee on a monthly basis and the lien for any fees, late charges, fines or interest that may be levied by the Management Committee in connection with such unpaid Assessments or charges shall be deemed subordinate to the Mortgage on the Suite upon which such Assessments or charges are levied.

(b) Extinguishment of Lien. The lien or claim against a Suite for such unpaid Assessments or charges shall not be affected by any sale or transfer of such Suite, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Suite or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such Assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments or charges which are extinguished in accordance with the foregoing sentence may be reallocated by the Management Committee and assessed to all Suites as Common Expenses. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Parcel from liability for, nor such Suite from the lien of, any assessments or charges thereafter falling due.

(c) Inspection. The Management Committee shall make available for inspection upon request, during normal business hours or under other reasonable circumstances, to Suite Owners, Mortgagees, insurers or guarantors of any Mortgage, current copies of this Declaration, the Plat, any rules enacted by the Management Committee concerning the Development, and the books, records and financial statements of the Management Committee.

(d) Notice. Upon written request to the Management Committee by a Mortgagee, insurer or guarantor of a Mortgage (which request identifies the name and address of such Mortgagee, insurer or guarantor and the Suite encumbered by the Mortgage held or insured by such Mortgagee, insurer or guarantor), such Mortgagee, insurer or guarantor shall be included on the appropriate lists maintained by the Management Committee and shall be entitled to timely written notice of any of the following:

(i) Any condemnation or casualty loss which affects a material portion of the Development or any Suite on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or guarantor of a Mortgage;

(ii) Any delinquency in the payment of Assessments or charges owed by the Suite Owner subject to a Mortgage held, insured, or guaranteed by such Mortgagee, insurer or guarantor of a Mortgage (as the case may be), which delinquency remains uncured for a period of sixty (60) days; or

(iii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Management Committee.

(e) Cure. Any Mortgagee or insurer or guarantor of a Mortgage receiving notice of a delinquency shall have the right, but not the obligation, within thirty (30) days after the receipt of such notice, to cure or cause to be cured such delinquency, and the Management Committee shall accept such performance by or at the instigation of such Mortgagee or insurer or guarantor of such

Mortgage as if the same had been performed by the Suite Owner who owns such Suite.

40. Estoppel Certificate. Any of the Suite Owners shall, upon ten (10) days written request, provide to the Management Committee with a certificate, duly executed by such Suite Owner that the Management Committee is not in default under this Declaration and has duly and properly performed all of its obligations hereunder.

41. Governing Law. This Declaration shall be liberally construed to effect all of its purposes, and shall be governed by and construed in accordance with the laws of the State of Utah.

42. Conflict in Documents. In the event of any conflict between the Declaration and the rules and regulations of the Management Committee, this Declaration shall control.

43. Exhibits. All exhibits referred to herein and attached hereto are incorporated herein by this reference.


44. Notices. Any notice required to be given under this Declaration shall be given by registered mail, return receipt requested and postal charge prepaid, or by hand delivery, with delivery to be effective on the date of delivery, if hand delivered, or if mailed, three (3) days after the same is deposited in the mail, addressed to the address provided by each Suite Owner, as changed by written notification to the Management Committee from time to time.

45. Lien Rights Unaffected. The recording of this Declaration shall not affect the priority or validity of any lien or encumbrance against any portion of the Development.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 16th day of December, 2010.

DECLARANT:

M&O HOLDINGS, LLC
A Utah Limited Liability Company

By: 
Mark Larsen, Manager

STATE OF UTAH)
 : SS.
County of Salt Lake)

On the 16 day of December, 2010 personally appeared before me Mark Larsen, who, being by me duly sworn did say that he is the Manager of M&O HOLDINGS, LLC, and that the said instrument was signed in behalf of said limited liability company by authority of a such limited liability company's Operating Agreement, and the aforesaid Manager acknowledged to me that said limited liability company executed the same.



Billie Lujan
NOTARY PUBLIC

EXHIBIT "A"

Legal Description of Land

A parcel of land located in Lot 2, Block 20, Ten Acre Plat "A", Big Field Survey, and in the Southwest Quarter of Section 32, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake County, State of Utah, described as follows:

BEGINNING at a point on the West line of Lot 2, Block 20, Ten Acre Plat "A", Big Field Survey, said point being North $0^{\circ}11'40''$ East 20.00 feet from the Southwest corner of said Lot 2, said point also lies South $89^{\circ}57'10''$ East (basis of bearing), along the monument line of 3900 South Street, between 700 East and 900 East Street, 33.00 feet and North $0^{\circ}11'40''$ East along the West line and it's projection of Lot 2, 53.00 feet from the found monument at the intersection of 700 East Street and 3900 South Street; and running thence North $0^{\circ}11'40''$ East along the West line of Lot 2, 260.50 feet; thence South $89^{\circ}57'43''$ East 241.49 feet; thence South $0^{\circ}11'34''$ West 260.54 feet to a point which lies 20.00 feet perpendicular distant North of the South line of Lot 2; thence North $89^{\circ}57'10''$ West along said line 241.50 feet to the point of beginning. Contains 62,913 sq. ft. or 1.44 acres.

EXHIBIT "B"

Ownership of Common Areas and Voting Rights

<u>SUITE</u>	<u>TOTAL SQ.FEET</u>	<u>% OF TOTAL</u>	<u>COMMON AREA %</u>	<u>VOTES</u>
101	3,995	16.30 %	16.30 %	1630
102	4,143	16.90 %	16.90 %	1690
103	4,116	16.80 %	16.80 %	1680
201	3,995	16.30 %	16.30 %	1630
202	4,143	16.90 %	16.90 %	1690
203	<u>4,116</u>	<u>16.80 %</u>	<u>16.80 %</u>	<u>1680</u>
TOTAL	24,838	100.00 %	100.00 %	10,000