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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
EQUITY TITLE
BY: RDJ, DEPUTY - WI 40 P.

DECLARATION OF CONDOMINIUM

FOR

CREEK ROAD OFFICE CONDOMINIUMS

THIS DECLARATION OF CONDOMINIUM ("**Declaration**") is made and executed by CREEK ROAD ASSOCIATES, LC, a Utah limited liability company ("**Declarant**"), pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended. Declarant is the owner of the Property defined below, upon which Declarant desires to develop a commercial condominium project. Declarant hereby submits the Property to the covenants, conditions, restrictions, terms and provisions hereof, which shall be enforceable equitable servitudes and shall run with the land constituting the Property.

1. DEFINITIONS. The following terms shall have the meanings as used herein:

"**Act**" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code).

"**Additional Land**" shall mean the land that may be added to the Project in accordance with the provisions of **Section 8**, and as shown on the Map.

"**Amendment**" shall mean any amendment to this Declaration made in accordance with this Declaration and the Act.

"**Articles**" shall mean the Articles of Incorporation of the Association.

"**Assessments**" shall mean those Assessments described in **Section 21** to fund the Common Expenses, and include Regular Assessments, Special Assessments and any other assessments levied by the Association including but not limited to the expenses of the Association arising under the REA (as defined below). "**Regular Assessments**" shall mean the annual Assessments levied by the Association to pay the budgeted Common Expenses. "**Special Assessments**" shall mean Assessments that the Association may levy from time to time, in addition to the Regular Assessments, for unexpected Common Expenses or other purposes as provided herein.

"**Association**" shall mean Creek Road Office Condominiums Owners Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

"**Board**" shall mean the Board of Trustees of the Association, appointed or elected in accordance with this Declaration and the Bylaws. The Board shall constitute the "management committee" defined under the Act.

"**Buildings**" shall mean the Buildings described in **Section 2**.

"**Bylaws**" shall mean the Bylaws of the Association, as amended from time to time. The initial Bylaws are attached hereto as **Exhibit D**.

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“**Common Areas and Facilities**” shall mean all portions of the Project other than the Units, as described in **Section 5** hereof, including the Limited Common Areas and Facilities. “**Limited Common Areas and Facilities**” shall mean any portion of the Common Areas and Facilities allocated by this Declaration or the Act, or as may be shown on the Map, for the exclusive use of one or more, but fewer than all, of the Units.

“**Common Expenses**” shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration or by the Act.

“**Common Expense Fund**” shall mean one or more deposit or investment accounts of the Association into which Assessments are deposited.

“**Convertible Space**” shall mean those portions of the Project that may be converted into Units, Common and Limited Common Areas and Facilities, as provided in **Section 7** hereof, and as designated on the Map.

“**Cost of Living Index**” shall mean the Consumer Price Index, all Urban Consumers -- U.S. City Average -- All Items (1982-84 = 100) Declarant may select any other comparable index which measures changes in the cost of living.

“**Declarant**” shall mean the original Declarant named herein as well as any successor in interest as defined by the Act.

“**Development Rights**” shall mean the right under the Act to (1) convert portions of the Project into one or more Units and/or Common Areas and Facilities, including Limited Common Areas and Facilities, pursuant to **Section 7** hereof, (2) add real estate to the Project pursuant to **Section 8** hereof, and (3) exercise any of the rights set forth in **Section 12** hereof.

“**Interest**” shall mean the undivided interest in the Common Areas and Facilities appurtenant to each Unit, which is based upon the square footage of such Unit as described in **Section 5** hereof and is set forth in **Exhibit B** hereto, as such Exhibit may be amended as provided herein.

“**Manager**” shall mean the person, firm or company designated by the Association to manage, in whole or in part, the affairs of the Association and the Project.

“**Map**” shall mean the Record of Survey Map of Creek Road Office Condominiums, recorded in the office of the Recorder, as it may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the initial Map may be amended at such time as the Buildings are constructed in the event there are material changes in the Buildings’ boundaries or elevations as constructed. The Map shall also be amended to reflect such changes to the Project as are permitted and effected under this Declaration. Such amendments to the Map are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. “**Supplemental Map**” shall mean any amendment to the Map made in accordance with this Declaration and the Act.

“**Member**” shall mean and refer to a member of the Association, and “**Membership**” shall mean membership in the Association.

“**Mortgage**” shall mean any mortgage, deed of trust or other security instrument (including the seller’s rights under a contract for deed) by which a Unit or any part thereof or interest therein is encumbered. A “**First Mortgage**” is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

“**Mortgagee**” shall mean any person or entity named as the mortgagee, beneficiary or holder of the seller’s interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A “**First Mortgagee**” shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

“**Owner**” shall mean any person or entity, including Declarant, at any time owning a Unit or an interest in a Unit (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term “**Owner**” shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

“**Project**” shall mean the Property, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Act. The Project shall be known as Creek Road Office Condominiums.

“**Property**” shall mean that certain real property situated in the County of Salt Lake, State of Utah described in **Section 2** below.

“**Recorder**” means the Official Recorder of Salt Lake County, Utah.

“**Total Votes of the Association**” shall mean the total number of votes appertaining to all Units, as described in **Section 10** hereof.

“**Unit**” shall mean a physical portion of the Project designed for separate ownership and occupancy as described in **Section 4** hereof.

“**Unit Number**” shall mean the number, letter or combination of numbers and letters that identifies a Unit.

2. DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS. The Property is legally described on **Exhibit A** attached hereto. The initial improvements SHALL consist of two connected buildings (the “**Buildings**”) each with two (2) floors plus a basement. The Buildings will contain certain Convertible Space as described in **Section 7**, and shall be principally constructed of: concrete footings and foundation; steel and concrete frame; stucco, brick veneer and block exteriors; sheetrock interiors and asphalt shingle roofs; and such other materials as allowed by current building codes. The Buildings will be supplied with telephone,

television, electricity, water, and sewer service. The Project also includes the Common Areas and Facilities described herein.

3. SUBMISSION TO ACT. Declarant hereby submits the Property, the Buildings and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, encumbered, leased, subleased, rented, used and improved as a condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units. Each and all of the provisions hereof shall be deemed to run with and benefit and burden the land and shall benefit and bind Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Declarant and the Association are each hereby granted a limited license to use the name "Creek Road Office Condominiums" in connection with the administration, sale and operation of their respective interests in the Project.

4. DESCRIPTION OF UNITS. The boundary lines of each Unit are as set forth on the Map and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls; floors, ceilings and roofs (except the interior finished surfaces thereof); foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Map and **Exhibit B** hereto contain the Unit Number of each Unit in the Project. The basement Units shown on the Map shall be converted in a manner apportioned prorata to the other Units, and one proratedly apportioned basement Unit shall be initially conveyed with each other Unit and shall thereafter be appurtenant thereto and shall be inseparable therefrom and may only be conveyed therewith. Notwithstanding the foregoing, basement Units may be leased to other Unit owners, but to no other parties.

5. DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES

(a) The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, except as otherwise provided herein, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies, fire escapes and entrances and exits of the buildings; the grounds in the Project designated as part of the Common Areas and Facilities on the Map, including all landscaping,

walkways, parking areas and drive aisles; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units (each Unit shall have its own separate power and gas meters, and water consumed in the Units shall be a Common Expense); all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map or any Supplemental Map; and all repairs and replacements of any of the foregoing. In the event of a conflict between this Declaration and the Map, the provisions of this Declaration shall control.

(b) The Interest appurtenant to each Unit in the Project is based upon the square footage of such Unit. **Exhibit B** to this Declaration shows the square footage of each Unit measured from the exterior finished surface of each perimeter wall of the Unit and from the center line of each party wall of the Unit, as well as the Interest appurtenant to each Unit. The Interest appurtenant to each Unit shall be determined by dividing the square footage of that Unit by the total square footage of all Units in the Project. Except as otherwise provided in this Declaration, the Interest appurtenant to each Unit shall have a permanent character and shall not be altered; provided, however, Declarant reserves the right to adjust the Interests following the addition of new Units as provided for herein. The sum of the Interests allocated to all Units shall at all times equal one hundred percent. Declarant is authorized to round the Interest of one or more Units in order to cause the total to equal one hundred percent. Unless specifically designated otherwise on the Map or a Supplemental Map, all of the hallways and stairwells of both Buildings shall be Common Areas and Facilities. The Association shall have the right and obligation to design, maintain, replace and otherwise control all landscaping on the Common Areas and Facilities. The Owners may not repair, replace, maintain or otherwise alter in any manner the landscaping in the Common Areas and Facilities.

6. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES. Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners. Mechanical systems (including heating, ventilation and air conditioning systems), hallways and other common walkways serving only separate Units shall be Limited Common Areas and Facilities with respect to the Units they serve. The Limited Common Areas and Facilities shall be those areas designated as such on the Map, in this Declaration or as provided for by the Act. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as shown on the Map or as specified in this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest. Each balcony attached to a Unit shall constitute Limited Common Area related to such Unit, provided that the Owner of such Unit shall only be responsible for day to day maintenance of such balcony, such as cleaning, and the Association shall be responsible for all other maintenance of the balconies, such as painting thereof and repairs thereto. Nothing shall be placed on any balcony (such as furniture, decorations, etc.) that is visible from any Common Area or other Unit without the Association's prior written consent, which may be withheld for any reason.

7. OPTION TO CONVERT SPACE

(a) Declarant hereby reserves the option, pursuant to Section 57-8-13.4 of the Act, to create additional Units and Common Areas and Facilities (including Limited Common Areas and Facilities) within any portion of the Project owned by Declarant upon the terms and provisions set forth in this Section and the Act (the “**Conversion Option**”). The creation of such additional Units and Common Areas and Facilities hereunder is referred to herein as “**Conversion**,” and the verb “**Convert**,” in all of its forms, shall refer to such Conversion. The terms and conditions of the Conversion Option shall be as follows.

(b) Only portions of the Project owned by Declarant may be Converted, and only Declarant may exercise the Conversion Option. Declarant may Convert from time to time and at different times, all or any portion or portions of the Project into one or more Units and/or Common Areas and Facilities, so long as such Conversion is made pursuant to the provisions of this Section. No assurance is made with regard to which portions of the Project will be Converted, or the order, schedule or configuration of Conversion, all of which shall be at the sole and absolute discretion of Declarant. In the event the Conversion Option is exercised with respect to a portion of the Project, such option may subsequently be exercised by Declarant with respect to any other portion of the Project.

(c) Portions of the Project outside of the Buildings may only be converted to Common Areas and Facilities. Units created from any portion of the Project which has not theretofore been Converted (the “**Unconverted Space**”) may be dissimilar to then existing Units. Declarant shall determine the Interest for any Units created pursuant to the Conversion Option on the basis otherwise described herein. Declarant reserves the right to exercise all other Development Rights with respect to any Units created pursuant to the Conversion Option.

(d) Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in any portion of the Project prior or subsequent to Converting any portion of the Project.

(e) In order to Convert any portion of the Project, the Declarant shall:

(1) Record, with regard to the portion of the Unconverted Space being Converted, a Supplemental Map showing the location and dimensions of the vertical and horizontal boundaries of each Unit and any Common Areas and Facilities formed out of the Unconverted Space, and assigning or reassigning any Limited Common Areas and Facilities that are to be appurtenant to any such Unit. Each such Supplemental Map shall be certified as to its accuracy and compliance with the requirements of the Act by the engineer or land surveyor who prepared or supervised the preparation of it; and

(2) Record simultaneously with each Supplemental Map an Amendment to this Declaration describing such Conversion. Each such Amendment shall assign a Unit Number to each Converted Unit formed out of the Unconverted Space, and shall reallocate, on the basis otherwise provided for herein, the Interests appertaining to all Units following such conversion. Except as otherwise provided by the Act, each such Amendment or Supplemental Map shall also

describe the Limited Common Areas and Facilities, if any, formed out of the Unconverted Space or a portion thereof, showing or designating the Unit or Units to which each is assigned.

(f) No provision of this Section shall be amended without the prior written consent of Declarant so long as it owns or has the right to acquire any Unit in the Project.

(g) In accordance with Section 57-8-13.4(3) of the Act, all Unconverted Space shall be treated for all purposes, including without limitation voting and Assessments, as a single Unit until and unless it is Converted. The Unconverted Space shall be assessed its appropriate portion of the Common Expenses related to the Project, and Declarant shall pay the Common Expenses attributable to such Unconverted Space. However, because the Unconverted Space that lies outside of the Buildings can only be converted into Common Areas and Facilities, such Unconverted Space shall be treated as part of the Common Areas and Facilities prior to conversion, and shall not be subject to Assessments, have voting rights or in any other way be treated as a Unit.

8. OPTION TO EXPAND. Pursuant to Sections 57-8-10(4) and 57-8-13.6 of the Act, Declarant hereby reserves the option to expand the Project (the “**Option to Expand**”) upon the terms and provisions set forth in this Section without the consent of any Owner or the Association. Each exercise of the Option to Expand must occur, if at all, no later than seven (7) years from the date of recording this Declaration, and may only be exercised by Declarant. The terms and conditions of the Option to Expand shall be as follows:

(a) The real property subject to the Option to Expand (the “**Additional Land**”) is more particularly described on **Exhibit C** attached hereto. Subject to the provisions below, the Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by the Declarant. No assurances are made with regard to which portions of the Additional Land, if any, will be added to the Project, the order in which any such portions will be added, whether the structures erected thereon will be compatible in any regard with the structures on the land originally within the Project, whether or how other improvements will be constructed, or the extent, if any, to which Units created on the Additional Land will be substantially identical to the Units on the land originally within the Project. In the event the Option to Expand is exercised with respect to a portion of the Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land.

(b) Declarant shall not be restricted in the location of improvements on the Additional Land or in the number of Units that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations, provided the Project when completed shall not exceed 36 Units total, nor 24 Units per acre on any portion of the Additional Land. The Units to be located on the Additional Land shall be subject to the same use restrictions as provided herein regarding the original Units. Declarant reserves the right to exercise all Developmental Rights with respect to any Units located on the Additional Land. Declarant reserves the right to add additional Limited Common Areas and Facilities to the Additional Land without limitation; however, no assurances are made in regard thereto.

(c) The Interests of the Owners shall be adjusted at the time Declarant records any Amendment and Supplemental Map reflecting Declarant's exercise of the Option to Expand in accordance with the provisions hereof. Such changes in Interests shall be reflected in an amended **Exhibit B** to this Declaration to be filed with the Recorder as part of the Amendment. It is contemplated that there may be multiple Amendments filed by Declarant and such Amendments are hereby expressly authorized. Declarant shall calculate and revise the Interests using the same method otherwise set forth herein. Declarant shall have the right to adjust the resulting Interests as may be necessary to assure that the total ownership interest equals 100% as required by the Act.

(d) Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit shall be deemed to have consented to all provisions of this Section. After the filing for record of any Amendment and Supplemental Map reflecting Declarant's exercise of any Option to Expand, legal and equitable title to each Unit thereby created within the Additional Land, including its appurtenant Interest, shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest therein. Declarant shall not be required to obtain the consent of any Owner or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding any portion of the Additional Land. No provision of this Section shall be amended without the prior written consent of Declarant so long as it owns or has the right to acquire any Units in the Project or exercise the Option to Expand.

9. NATURE AND INCIDENTS OF OWNERSHIP

(a) Each Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

(b) Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet, or otherwise decorate the surfaces of the walls, ceilings, floors and doors inside its Unit. Each Owner shall keep the interior of its Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any Unit or Limited Common Area accessible from a Unit should develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following notice from the Association, or in the event any Common Areas and Facilities are most easily accessible from a Unit, the Association shall have the right, at the expense of the Owner if to remedy the Owner's failure in its obligation to maintain, and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair.

(c) With the written consent of the Board, two or more Units may be utilized by the Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Board, any walls, floors or other structural separations between any two such Units may, for as long as the two Units are utilized as one Unit, be utilized by the Owners thereof as Limited Common Areas and Facilities, except to the extent that any such structural separations are

necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units that, but for joint utilization of the two Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas and Facilities.

(d) Units may be subdivided or combined as set forth in the following paragraphs:

(1) No Units shall be subdivided and/or combined either by agreement or legal proceedings, except as provided in this Section. An Owner or Owners may propose subdividing or combining Units by submitting the proposal in writing to the Board, the Mortgagees of the subject Units and, if required by applicable law, Salt Lake County. The proposal must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Map.

(2) A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by the Board, the Mortgagees of the Units to be subdivided, and Salt Lake County to the extent required by applicable law. The Board may approve the proposal as to form and legal sufficiency. Salt Lake County, if required, may approve the proposal as to applicable planning and zoning requirements. No proposal shall be approved unless the resulting Units provide adequate facilities and means of ingress and egress to comply with applicable zoning and condominium statutes and regulations.

(e) A proposal to subdivide Units shall provide for reallocation of the appurtenant basement Unit as well as the percentage ownership in the Common Areas and Facilities among the resulting Units on the basis otherwise provided herein, so that the combined percentages of ownership of the resulting Units are identical with the percentage ownership of the subdivided Units prior to subdivision. The Owners of the Units to be subdivided or combined shall be responsible for all costs associated with the proposal and its implementation including but not limited to costs of Amendment of this Declaration and Map and recording the same to effect the proposal; review of the proposal, including reasonable attorneys' fees incurred by the Board, the Mortgagees and Salt Lake County; and the cost of any modifications to the Project to implement the proposal.

(f) Upon approval of the proposal, the Owners making the proposal may proceed according to the proposed plans and specifications; provided that the Board may, in its discretion, require that the Board administer the work, or that provisions for the protection of other Units or Common Areas and Facilities and/or reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Map, if any, and the changes in this Declaration shall be placed of record, at the requesting Owner's expense, as amendments thereto.

(g) The exterior surfaces of the Units shall not be altered or modified without the prior written approval of the Board unless such changes or modifications are consistent with any written rules or regulations for the exterior surfaces established by the Board. In the absence of

such written rules or regulations, no exterior alterations, improvements, or remodeling, whether structural or cosmetic, will be made without the prior written approval of the Board.

(h) Each Unit shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

10. VOTING. At any meeting of the Association, each Owner, including Declarant, either in person or by proxy, shall be entitled to vote the number of votes appurtenant to his Unit(s) as set forth in **Exhibit B**. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

11. TITLE TO UNITS

(a) Title to a Unit may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

(b) Title to a part of a Unit may not be separated from any other part thereof during the period of ownership, and each Unit, and the Interest appurtenant to each, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant Membership as herein set forth.

(c) The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

(d) Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and Facilities or any part thereof except the Interest appurtenant to his interest in a Unit. Any Mortgage of any Unit shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

(e) No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in this Declaration, shall be deemed to be

performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

(f) Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the appurtenant Interest, and to incorporate all the rights incident to ownership of the Unit and all of the limitations on such ownership as described in this Declaration.

12. ADDITIONAL DEVELOPMENT RIGHTS. The following additional Development Rights are hereby granted or reserved by Declarant:

(a) Declarant hereby reserves an easement throughout the Project and all portions thereof for a period of eight (8) years from the recording of this Declaration for the purpose of completing all improvements contemplated by this Declaration and the Map, including but not limited to improvements to Unconverted Space and Additional Land.

(b) Declarant hereby reserves the right to maintain sales offices, management offices, and signs advertising the Project, in any of the Units that it owns or on the Common Areas and Facilities for a period of ten (10) years from the recording of this Declaration.

(c) There is hereby established a period of Declarant control of the Association during which period Declarant or persons designated by it shall have the authority to appoint and remove Association officers and members of the Board. The period of Declarant control shall terminate the earlier of: (a) six (6) years from and after the recording of this Declaration; or (b) after conveyance of Units to which three-fourths of the Interests appertain or after all Additional Land has been added to the Project and Unconverted Space has been converted, whichever last occurs.

13. RESTRICTIONS ON USE. The Units, Unconverted Space and Common Areas and Facilities, except as otherwise permitted in writing by the Board, shall be used in accordance with the following restrictions:

(a) The Units and Unconverted Space within the Project may be used only as business offices, professional offices, and ancillary uses including restaurants, retail businesses, health and fitness facilities, as approved by the Association; provided, however, that if the particular use of any Unit increases the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, the Owner of such Unit shall be assessed for and shall pay the amount of such increase.

(b) All customers, clients, patrons, and licensees of Owners of Units shall be permitted to enter upon the Project and shall have a non-exclusive easement across the Common Areas and Facilities to the extent reasonably necessary for access to such Units.

(c) No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done on or placed in or upon any part of the Project that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.

(d) No activities shall be conducted or improvements constructed in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

(e) No signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger in the Association's opinion, or except as may be used by Declarant as part of its sales program, or as approved by the Board and Salt Lake County (if required by law) with respect to the Units.

(f) The interior window coverings in Units shall present a uniform appearance from the outside of the Units. All interior window coverings shall be installed or employed in each Unit by the Board or with the prior inspection and written approval of the Board. The Board shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of the Buildings. Owners shall not erect or display any signs, banners or similar items on, from or in their Units without the prior written consent of the Board.

(g) Except as otherwise provided in this Declaration, no Unit or portion thereof may be combined with any other Unit or portion thereof or further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

(h) No Owner shall, without the prior written consent of the Board, do any act that would impair the structural soundness or integrity of any Buildings or the safety of property, impair any easement or other appurtenance to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities.

(i) There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Units, except with the prior written consent of the Board.

(j) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of 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 Board. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would be in violation of any statute or rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his guests, lessees, licensees, or invitees.

(k) No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Association.

13. ASSOCIATION. Every Owner shall be a Member of the Association. One Membership shall exist for each Unit, shall be inseparably appurtenant thereto and shall automatically transfer therewith but only therewith. If title to any Unit is held by more than one Owner, the Membership related to such Unit shall be shared by all such Owners in the same proportionate interests and by the same type of tenancy in which they hold title to such Unit. No person other than an Owner shall be a Member. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Board, which shall be composed as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws. Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

(a) To make and enforce all rules and regulations covering the operation, use and maintenance of the Project, the Units, and the Common Areas and Facilities.

(b) To engage the services of the Manager, accountants, attorneys, or other employees or agents and to pay to said persons a reasonable compensation therefor.

(c) To operate, maintain, repair, improve and replace the Common Areas and Facilities.

(d) To determine and pay the Common Expenses.

(e) To assess and collect the proportionate share of Common Expenses from the Owners, as provided herein.

(f) To grant easements and licenses and enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

(g) To open bank accounts and borrow money on behalf of the Association and to designate the signatories therefor.

(h) To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

(i) To bring, prosecute and settle litigation for itself, the Association and the Project.

(j) To obtain insurance for the Association with respect to the Units and the Common Areas and Facilities, workers' compensation insurance, and any other insurance it deems necessary or appropriate to protect the Owners and the Association.

(k) To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

(l) To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

(m) To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws.

(n) To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

(o) To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

(p) To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project and enter into contracts with other entities. Such contracts may, among other things, obligate the Association to pay assessments and other costs associated with the maintenance of roads and other amenities that benefit the Association.

(q) Subject to the limitations of the Act, and any other applicable law, the Board may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section.

(r) The Board may convey or subject to a Mortgage all or portions of the Common Areas and Facilities of the Project if Owners entitled to cast a majority of the Total Votes of the Association so approve. However, all Owners of Units to which any Limited Common Areas and Facilities are appurtenant must agree to convey those Limited Common Areas or Facilities or subject the same to any Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

(s) Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project,

which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

(t) When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

Neither the Board nor the Manager shall sell any property of the Association except as permitted by the Act. The Board may enter into a contract with the Manager for the management of the Project.

14. MAINTENANCE, ALTERATION AND IMPROVEMENT. The maintenance, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Association, including the maintenance, repair, and replacement obligations arising under the REA, and the cost thereof shall be a Common Expense. The Association shall also maintain, replace and repair all common porches and decks, balconies as described herein, and all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. The REA provides for the maintenance of roads and other amenities that benefit the Association and shall be included as a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

15. INSURANCE. Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, insurance as follows:

(a) The Association shall maintain property insurance on the Common Areas and Facilities insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, without regard to any

deductibles, shall be not less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) The Association shall maintain liability insurance in an amount determined by the Board but not less than \$1,000,000 for any one person injured in any one occurrence and not less than \$5,000,000 for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Units and the Common Areas and Facilities.

(c) Insurance in types and amounts required by the REA.

The insurance maintained under paragraph (a) of this Section shall include the Units but need not include improvements installed by Owners or the personal property of Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Owners. Where applicable, insurance policies carried by the Association shall provide the following:

(1) Each Owner, or the Association, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of his Interest or Membership.

(2) The insurer waives its right to subrogation under the policy against any Owner or members of his household.

(3) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by another person.

(4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, then the Association's policy provides primary insurance.

(5) All Owners as a class shall be named as additional insureds in any policy issued to the Association.

An insurance policy issued to the Association shall not prevent an Owner from obtaining insurance for his own benefit. Any loss covered by the property policy described above shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Association and not to the Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of **Section 16** of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of

insurance to the Association and, on written request, to any Owner or Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. This Section does not prohibit the Board from acquiring additional or greater amounts of coverage as it reasonably deems appropriate. The Board shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principals under the bond may reasonably be expected to have control or access at any time.

16. DESTRUCTION OR DAMAGE. In case of fire or any other disaster that causes damage or destruction to all or part of the Project, the Board, with the help of an independent appraiser, shall determine the percentage that was destroyed or substantially damaged. If less than two-thirds (2/3) of the Project was destroyed or substantially damaged, the Board shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective Interests. Reconstruction of the Project shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas and Facilities having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of **Section 18** hereof shall apply. If two-thirds (2/3) or more of the Project is destroyed or substantially damaged, the Board shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Association for the purpose of deciding whether or not the Project shall be repaired and restored. If Owners holding three fourths (3/4) or more of the Total Votes of the Association, in person or by proxy, vote to repair or restore the Project, the Board shall promptly arrange for the reconstruction of the Project using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for any deficiency in proportion to their respective Interests. At such election, if Owners holding three-fourths (3/4) or more of the Total Votes of the Association do not vote either in person or by proxy to make provision for reconstruction, the Board shall record with the Recorder a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (i) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his Interest; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (iii) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner.

17. TERMINATION. In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of **Section 16** above and the Owners do not vote to reconstruct the Project as provided therein, the Project shall be

removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage. All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership of any Unit, its consent shall also be required to remove the Project from the provisions of the Act. After removal of the Project from the Act, the Owners shall own the Project and all assets of the Association as tenants in common and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be in the same proportions as their Interests. This Section cannot be amended without consent of all Owners and Mortgagees.

18. EMINENT DOMAIN. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Owner shall be entitled to notice thereof and the Board shall, and the Owners at their respective expense may, participate in the proceedings incident thereto. With respect to the Common Areas and Facilities, including Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his Interest. This provision does not prohibit a majority of the Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Map are duly amended. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to **Section 16** above and shall be deposited with the Board as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damaged or awards with the Board as trustee. In the event an Owner refuses to so deposit his award with the Board, then at the option of the Board, either a Special Assessment shall be made against the defaulting Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner. In the event the Project is removed from the provisions of the Act pursuant to **Section 16** above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners' respective Interests. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

(b) If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid

balance of its Mortgage and the excess, if any, shall be distributed to the Owner. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Board. The Interests appurtenant to the Units that continue as part of the Project shall be equitably adjusted to distribute the Interests among the remaining Owners.

Changes in Units, in the Common Areas and Facilities, and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Section shall be evidenced by an Amendment to this Declaration and the Map, which need not be approved by the Owners.

19. MORTGAGEE PROTECTION. The Board shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Board will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Board is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Board of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee. The Board shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days. Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid Assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. Except as otherwise required by the Act, any liens created under the Act, pursuant to this Declaration or the Bylaws, upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Bylaws. No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

20. AMENDMENT. Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a bare majority of the Total Votes of the Association. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Association designated for that purpose, or in the absence of such designation, by the President of the

Association that the appropriate consent has been obtained, and shall be duly recorded with the Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves as long as it has any interest hereunder, and the Association shall thereafter have, the right, without the consent of any other Owners, to amend any provisions of this Declaration to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce-Real Estate Division or any other federal, state or local regulatory authority affecting the Project. Also notwithstanding anything to the contrary contained or implied herein, as long as Declarant owns any Unit(s), Declarant shall have the unilateral right without the consent or approval of any Owner or the Association to amend this Declaration and the Map to further divide and/or adjust the boundary lines between any Units owned by Declarant and alter the dimensions and interior elements and configuration thereof.

21. ASSESSMENTS. The Association shall make and collect Assessments from the Owners for their respective shares of Common Expenses pursuant to the Bylaws and subject to the following provisions:

(a) Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as such Owner's Interest. Two separate and distinct funds shall be created and maintained hereunder; one for operating expenses and one for capital expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Section shall be the Common Expense Fund. Assessments shall include both Regular Assessments and Special Assessments. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses. After an Assessment has been made by the Association, Regular Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Assessments shall be levied against each separate Unit, and shall commence as to all Units on the first day of the month following the closing of the first sale of a Unit.

(b) The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Assessment is due.

(c) In addition to the Regular Assessments, the Association may levy in any calendar year Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or a described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Assessments from the Owners. The portion of any Special Assessment levied against a particular Unit shall be equal to the Interest appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Assessments shall not apply when the Special Assessment against an Owner is a remedy utilized by the Condominium Committee to reimburse the Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association, or any other governing instrument for the Project. The Board shall provide notice by first class mail to all Owners of

any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

(d) All Assessments shall be due as determined pursuant to the Bylaws. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a late fee in the amount of \$5.00 per day, plus interest, adjustable from year to year at the discretion of the Board pursuant to the Cost of Living Index. Any payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' Interests are reallocated, Assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated Interests.

(e) There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation with the Recorder of a written notice of lien by the Board or the Manager. Such lien shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded before the recordation of this Declaration, a First Mortgage on a Unit, and assessments, liens and charges in favor of the state or any political subdivision thereof for taxes and other governmental assessments or charges past due and unpaid on the Unit. Such lien may be enforced by judicial foreclosure or by non-judicial foreclosure in the same manner in which mortgages and deeds of trust on real property may be foreclosed in the State of Utah. A lien for unpaid Assessments shall be enforced in accordance with the provisions of this Section or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party.

(f) The Board upon written request shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith. The Board shall include in the Assessments amounts representing sums to be used for the replacement of or additions to the capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account for such Unit shall be deemed transferred to the transferee of the Unit. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the

Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations otherwise set forth in this Section. If the current replacement value of the major components of the Common Areas and Facilities which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

(1) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the items identified in subparagraph a, above, as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration or maintenance of each item identified in subparagraph (a), above, during and at the end of its useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain. If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid.

22. EASEMENTS. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit, an easement for such encroachment

and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Improvements, including Units, Common Areas and Facilities and Limited Common Areas and Facilities, constructed as subsequent phases of the Project, if any, may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted. Declarant shall have a transferable easement over, across and within the Property for the purposes of (i) completing construction of the Project and improvements therein as shown on the Map and for doing all things reasonably necessary or appropriate in connection therewith, (ii) connecting the Buildings to other adjoining structures or buildings, and (iii) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Buildings, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to his Unit(s) and to any Limited Common Areas and Facilities appurtenant to his Unit(s), and shall have the right to the horizontal, vertical and lateral support of his Unit(s). The Association and the Manager shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities for use by the Owners and the Association. The Project is subject to and benefited by easements, rights-of-way and other encumbrances as set forth in the REA. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

23. NOTICES. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Board. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board addressed to:

Creek Road Office Condominiums
Owners Association, Inc.
c/o Webco, Inc.
825 25th Street
Ogden, UT 84401

0K8426P64803

24. NO WAIVER. The failure of the Board or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agents or designees of the payment of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

25. ENFORCEMENT. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the REA, the Bylaws and the rules and regulations of the Association and decisions issued pursuant thereto. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed. The Association shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of this Declaration or the rules and regulations of the Association for the Project except pursuant to (a) the judgment of a court, or (b) a foreclosure for the failure of an Owner to pay Assessments duly levied by the Association.

26. REA. The Property is encumbered by, and is entitled to the benefits, and subject to the obligations, arising under that certain Creek Road Office Condominiums Reciprocal Easement Agreement recorded, or to be recorded, in the Records against the Property and Additional Land (the "REA"). The Association shall perform all of the obligations and bear all of the responsibilities and liabilities thereunder of the owner of the Property for all purposes. The Association may include all costs imposed upon it as a result thereof in the budgeting and assessment of Common Expenses.

27. AGENT FOR SERVICE OF PROCESS. The agent for service of process under the Act until the expiration of the Option to Expand shall be Creek Road Associates, LC, whose address is 825 25th Street, Ogden, UT 84401. Thereafter, the agent for service of process shall be the Association.

28. SEVERABILITY. Invalidation of any of the provisions contained in this Declaration, or any application thereof, by judgment or court order, shall in no way affect any of the other provisions of this Declaration or any other application thereof and the remainder of this

**EXHIBIT A
TO
DECLARATION OF CONDOMINIUM FOR
CREEK ROAD OFFICE CONDOMINIUMS**

LEGAL DESCRIPTION OF THE PROPERTY

A part of the East half of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at a point on the North Line of Curtis Subdivision No. 4 being 7.00 feet South 89°45'42" West from the Northeast corner of Lot 16 of said Curtis Subdivision; said point of beginning is 698.00 feet West; 184.15 feet South; and 208.33 feet South 89°45'42" West along the North Line of said subdivision from the East Quarter Corner of said Section 29; said point of beginning is also on the Westerly Line of Creek Road (as widened to 40.00 foot half-width; and running thence South 89°45'42" West 400.01 feet along said North Line of Curtis Subdivision; thence North 46°41'30" West 171.35 feet to a point of curvature; thence Northwesterly along the arc of a 15.00 foot radius curve to the right a distance of 11.60 feet (Central Angle equals 44°18'32" and Long Chord bears North 24°32'14" West 11.31 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 50.00 foot radius curve to the left a distance of 21.58 feet (Central Angle equals 24°43'44" and Long Chord bears North 14°44'50" West 21.41 feet); thence North 43°18'30" East 85.35 feet; thence North 18°46'30" East 110.09 feet; thence South 71°13'30" East 195.96 feet; thence North 19°38'32" East 183.71 feet to a point on the Westerly Line of said Creek Road (as widened to 40.00 foot half-width); thence Southeasterly along the arc of a 534.75 foot radius curve to the right a distance of 464.72 feet (Central Angle equals 49°47'31" and Long Chord bears South 25°27'54" East 450.23 feet) and South 16.67 feet along said Westerly Line of Creek Road to the Point of Beginning. (Contains 142,239 sq. ft., or 3.265 acres.)

**EXHIBIT B
TO
DECLARATION OF CONDOMINIUM FOR
CREEK ROAD OFFICE CONDOMINIUMS**

UNIT NO.	SQ. FT.	INTEREST/VOTES
UNIT A1 BUILDING A	7370 SOUTH CREEK ROAD #A1	12%
UNIT A2 BUILDING A	7370 SOUTH CREEK ROAD #A2	12%
UNIT A3 BUILDING A	7370 SOUTH CREEK ROAD #A3	12%
UNIT A4A AND A4B BUILDING A	7370 SOUTH CREEK ROAD #A4	14%
UNIT B1 BUILDING B	7390 SOUTH CREEK ROAD #B1	12%
UNIT B2 BUILDING B	7390 SOUTH CREEK ROAD #B2	12%
UNIT B3 BUILDING B	7390 SOUTH CREEK ROAD #B3	12%
UNIT B4A AND B4B BUILDING B	7390 SOUTH CREEK ROAD #B4	14%

THE FOLLOWING TO BE FREE SPACE UNITS TO BE USED AS STORAGE FOR THE UNITS ABOVE.

- FREE SPACE A3
- FREE SPACE A1A
- FREE SPACE A1B
- FREE SPACE A2B
- FREE SPACE A2A
- FREE SPACE A4
- FREE SPACE B3
- FREE SPACE B1A
- FREE SPACE B1B
- FREE SPACE B2B
- FREE SPACE B2A
- FREE SPACE B4

**EXHIBIT C
TO
DECLARATION OF CONDOMINIUM FOR
CREEK ROAD OFFICE CONDOMINIUMS**

LEGAL DESCRIPTION OF ADDITIONAL LAND

A part of the East half of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey is Salt Lake County, Utah:

Beginning at the Northwest Corner of Lot 14 of Curtis Subdivision No. 4 being 698.00 feet West; 184.15 feet South; and 608.34 feet South 89°45'42" West along the North Line of said Subdivision from the East Quarter Corner of said Section 29; and running thence North 46°41'30" West 171.35 feet to a point of curvature; thence Northwesterly along the arc of a 15.00 foot radius curve to the right a distance of 11.60 feet (Central Angle equals 44°18'32" and Long Chord bears North 24°32'14" West 11.31 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 50.00 foot radius curve to the left a distance of 21.58 feet (Central Angle equals 24°43'44" and Long Chord bears North 14°44'50" West 21.41 feet); thence North 43°18'30" East 85.35 feet; thence North 18°46'30" East 61.10 feet; thence South 71°13'30" East 297.05 feet; thence South 43°53'50" East 15.00 feet; thence South 16°34'12" East 106.38 feet; thence South 36°35'45" West 15.00 feet; thence South 89°45'42" West 251.61 feet; thence South 0°14'18" East 47.00 feet to the North Line of said Curtis Subdivision No. 4; thence South 89°45'42" West 5.00 feet along said North Line to the Point of Beginning. (Contains 61,294 sq. ft. or 1.407 acres.)

EXHIBIT D
TO
DECLARATION OF CONDOMINIUM FOR
CREEK ROAD OFFICE CONDOMINIUMS

BYLAWS OF
CREEK ROAD OFFICE CONDOMINIUMS
OWNERS ASSOCIATION, INC.

The administration of CREEK ROAD OFFICE CONDOMINIUMS OWNERS ASSOCIATION, INC. (the “**Association**”) shall be governed by the Act, the Declaration, the Articles and these Bylaws. Terms that are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the Declaration of Condominium for Creek Road Office Condominiums, recorded in the Official Records of Salt Lake County, Utah.

1. **Application of Bylaws.** All present and future Owners, Mortgagees, lessees and occupants of Units and their employees and guests, and any other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit, or the occupancy of any Unit, shall constitute an agreement that the provisions of the Declaration, these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with.

2. **Board.**

2.1 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Board, which shall consist of at least three (3) natural persons. The Board shall be the Association’s governing board. The first Board shall be appointed by the Declarant, and shall serve until the first meeting of the Association, at which time an election of all the members of the Board shall be conducted.

2.2 The Declaration establishes a period of Declarant control of the Association, during which period the Declarant or persons designated by it have authority to appoint and remove the officers and members of the Board. The period of Declarant control shall terminate as set forth in the Declaration. Not later than the termination of the period of Declarant control, the Owners shall elect a Board of at least three (3) members. The members and officers of the Board shall take office upon election. Thereafter, at every annual meeting, the Association shall elect the members of the Board to fill those positions becoming vacant at such meeting. The Board may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Board. Nominations for positions on the Board may be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Owners and signed by the nominee named therein indicating his or her willingness to serve as a member of the Board, if elected.

2.3 Voting for the Board shall be by secret written ballot. At any meeting of the Association, each Owner, either in person or by proxy, shall be entitled to the number of votes set forth in Exhibit A to the Declaration for each Unit owned multiplied by the number of Board seats to be filled. Each Owner may cumulate his or her votes with respect to the Units for which he or she is voting and cast all of them in favor of a single candidate, or distribute his or her votes among as many candidates as the Owner sees fit. The initial members of the Board shall be the following persons and each shall hold the office indicated:

President/Member: Richard M. Webber
Secretary/Member: Mike Schofield
Treasurer/Member: Jed Iverson

2.4 After the end of the period of Declarant control described herein, members of the Board shall serve for terms of two (2) years beginning immediately upon their election by the Association. Thereafter, all members of the Board elected shall serve for two-year terms. The members of the Board shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Board who fails to attend three consecutive Board meetings or fails to attend at least 25% of the Board meetings held during any fiscal year shall be deemed to have tendered his resignation, and upon acceptance by the Board his position shall be vacant.

2.5 Any member of the Board may resign at any time by giving written notice to the President of the Association or to the remaining Board members. The sale of any such member's Unit or Units resulting in that member no longer owning a Unit in the Project shall constitute a resignation from the Board. The Owners, by an 80% vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by Declarant during the period of Declarant control.

2.6 If vacancies shall occur in the Board by reason of the death or resignation of a Board member, the Board members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board member by the Owners may be filled by election at the meeting at which such Board member is removed or any subsequent regular or special meeting of the Association.

2.7 The members of the Board shall receive no compensation for their services unless expressly approved by the vote or written assent of a majority of the voting power residing in Owners. Any member of the Board may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such employment shall be approved by vote or in writing by all members of the Board not including the member to be employed.

2.8 The Board, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Declaration, these Bylaws and the rules and regulations governing the Project. The Board is

authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective 30 days after adoption by the Board. The Board shall have the powers, duties and responsibilities with respect to the Project as contained in the Act, the Utah Nonprofit Corporation and Co-operative Association Act, the Declaration, the Articles and these Bylaws.

2.9 The meetings of the Board shall be held at least once each calendar quarter at such times and places within the Project, or some other reasonable and suitable location in the State of Utah. A majority of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. The Board shall annually elect all of the officers of the Association. The election of officers shall be conducted at the first meeting of the Board held subsequent to the annual meeting of the Association.

2.10 Written notice of the time and place of Board meetings shall be posted at a prominent place or places within the Project not less than four (4) days prior to the meeting.

2.11 Special meetings of the Board may be called by written notice signed by any two members of the Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project or some other reasonable location in the State of Utah. Written notice of any special meeting shall be posted in a manner prescribed for notice of regular meetings of the Board and shall be sent to all members of the Board not less than 48 hours prior to the scheduled time of the meeting; provided, however, that notice of such meeting need not be given to any member signing a waiver of notice or a written consent to the holding of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid. If an agenda is prepared for a special meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.12 Notices of all regular Board meetings shall be given in writing to each member of the Board not less than 30 days prior to the meeting, provided that this requirement shall not apply to any member of the Board who has signed a waiver of notice or a written consent to the holding of a meeting.

2.13 Regular and special meetings of the Board shall be open to all Members; provided, however, that the Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, with the approval of a majority of a quorum of its members, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.14 Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Board members, and an explanation of the action so taken is posted at a prominent place or places within the Project within three (3) days after the written consent of all Board members has been obtained.

2.15 The Association's fiscal year shall be determined by the Board.

2.16 Minutes of each Board meeting shall be distributed or otherwise made available to all Owners.

2.17 If a member of the Board is sued for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association.

2.18 An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership, member of a limited liability company that owns a Unit, and a fiduciary of an estate that owns a Unit may be considered an Owner for the purpose of determining eligibility for membership of the Board. In all events where the person serving or offering to serve as an officer or member of the Board is not the record Owner, they shall file proof of authority in the records of the Association.

2.19 The Board or the officers appointed thereby may delegate to the Manager, or such other persons as it so determines, all of the duties and obligations of the Board set forth herein and in the Declaration to the extent such duties and obligations are properly delegable.

3. Meetings of the Association.

3.1 The first meeting of the Association shall be held within (6) six months after the end of the period of Declarant control described herein. Thereafter, there shall be an annual meeting of the Association at a reasonable place in the Project or at a meeting place as close thereto as reasonably possible, and at a reasonable time as may be designated by written notice by the Board. Notice of the annual meeting shall be delivered to the Owners by first-class mail not less than ten (10) days prior to the date set for said meeting and shall specify the place, day and hour of the meeting and a brief statement of the matters on the agenda which the Board intends to present or believes others will present for action by the members. The statement shall include the name, address and a brief biographical sketch, if available, of each person who will stand for election to the Board.

3.2 Special meetings of the Association shall be called by written notice signed by the Declarant, the President, a majority of the Board or by Owners representing at least twenty five percent (25%) of the Total Votes of the Association, which shall be hand delivered or sent prepaid by United States mail, not less than thirty (30) nor more than ninety (90) days prior to the date fixed for said meeting, to each Owner at such Owner's address as shown in the records of the Association or to any other mailing address designated in writing by the Owner. Such notice shall specify the place, day and hour of the meeting and a brief statement of the items on the agenda, including the general nature of any proposed amendment to the Declaration or

Bylaws, any budgetary changes and any proposal to remove an officer or member of the Board. Special meetings may be held at a reasonable place in the Project or at a meeting place as close thereto as reasonably possible, to consider matters which, by the terms of the Declaration, require the approval of all or some of the Owners or for any other reasonable purpose.

3.3 The presence in person or by proxy of Owners holding 25% or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Owners of record properly given shall constitute a quorum. In the absence of a quorum at a Association meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. No quorum shall be required for an adjourned meeting. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings of the Association. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Owners. Unless otherwise expressly provided in the Act, the Declaration and these Bylaws, any action may be taken at any meeting of the Owners at which a quorum is present upon a majority vote of the Owners who are present in person or by proxy.

3.4 Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Declaration or these Bylaws.

3.5 Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

(a) A written ballot is distributed to every Owner entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Owner to return the ballot to the Association.

(b) The written ballot is signed by all of the Members who are entitled to vote on the subject matter thereof.

3.6 At each meeting of the Association, each Member entitled to vote shall be entitled to vote in person or by proxy. For any Unit owned by more than one Owner, all of the Owners of such Unit may sign a certificate designating one of the co-Owners as the Member authorized to cast the votes appurtenant to such Unit. In such event the Board may rely on such certificate as being sufficient evidence of the authority of the person casting the votes appurtenant to such Unit. In the absence of such a certificate, if only one of several Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the Owners of a Unit is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of such Owners. Absent a certificate of authorization, there shall be deemed to be majority agreement if any one of the Owners casts the votes allocated to the Unit owned without protest made promptly to the person presiding over the meeting by any of the other Owners of such Unit. The right to vote by proxy

shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by its attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered at the beginning of the meeting to the secretary of the Association, or such other officer or person who may be acting as the secretary at the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. An Owner may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Association. Actual notice includes the Association's receipt of one or more proxies signed by the same Owner. In such event, the proxy with the latest date shall be accepted. A proxy is void if it is not dated or purports to be revocable without notice. Proxies received by facsimile transmission are valid if they meet all other requirements under this section.

3.7 Minutes of the annual and special meetings of the Association shall be distributed to each member within sixty (60) days after the meeting.

4. **Officers.**

4.1 All officers and employees of the Association shall serve at the will of the Board. The officers shall be a President, Secretary and Treasurer. The offices of Secretary and Treasurer may be combined in the discretion of the Board. The Board may appoint Vice Presidents and such other assistant officers as the Board may deem necessary. No officer shall be required to be an Owner. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Board and may be removed and replaced by the Board. The Board may require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.2 The President shall be the chief executive of the Board and shall preside at all meetings of the Association and of the Board and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Board may require.

4.3 The Vice President, if any, shall perform the functions of the President in his absence or inability to serve.

4.4 The Secretary shall keep minutes of all proceedings of the Board and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Owners and the Board.

4.5 The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to the Manager. If there are no Vice Presidents and the President is absent or unable to serve, then the Treasurer shall perform the functions of the President.

4.6 Any officer may prepare, execute, certify and record properly adopted amendments to the Declaration on behalf of the Association.

5. Common Expenses and Assessments.

5.1 All Assessments shall be made in accordance with the Declaration.

5.2 No Owner shall be exempt from liability for Assessments by waiver of the use or enjoyment of any of the Project or by abandonment of his Unit.

5.3 The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board in assessing Assessments against the Units, the Treasurer shall keep an accurate record of such Assessments and of the payments thereof by each Owner.

5.4 All Assessments shall be a separate, distinct and personal liability of the Owners at the time each Assessment is made. The Board shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of Assessments.

5.5 Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Board, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of any unpaid Assessment charged against such Unit and its Owner, and if such statement does not reveal the full amount of the unpaid Assessment as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon, provided that the former Owner shall remain so liable for the excess. Any such excess which cannot be promptly collected from the former Owner shall be reassessed by the Board as an Assessment to be collected from all Owners, including without limitation the purchaser of such Unit, his successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Board for which the Assessment is made relate in whole or in part to any period prior to that date. The Board is authorized to require a reasonable fee for furnishing such statements.

5.6 In addition to the statements issuable to purchasers, the Board shall, upon ten (10) days' prior written request therefor, provide to any Owner, to any person who shall have entered into a binding agreement to purchase a Unit and to any Mortgagee, on request at reasonable intervals, a current statement of unpaid Assessments with respect to a Unit. The Board is authorized to require a reasonable fee for furnishing such statements.

5.7 In all cases where all or part of any Assessment cannot be promptly collected from the persons or entities liable therefor under the Declaration or these Bylaws, the Board shall reassess the same as an Assessment without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Assessments.

6. Litigation.

6.1 If any action is brought by the Board on behalf of the Association, the expenses of suit, including reasonable attorneys' fees and costs, shall be a Common Expense. Except as otherwise provided, if any action is brought against the Owners or against the Board or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorneys' fees and costs, shall be a Common Expense. If any action is brought against one or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Owners, as a Common Expense or otherwise.

6.2 Except as otherwise provided by the Act, any action brought against the Association, the Board or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Board, and shall be defended by the Board; and the Owners and Mortgagees shall have no right to participate in such defense other than through the Board. Actions against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Board, and shall be defended by such Owners.

7. Abatement and Enjoinment of Violations by Owners.

7.1 The violation of any rules or regulations adopted by the Board, the breach of any provision contained herein or the breach of any provision of the Declaration shall give the Board the right, in addition to any other rights set forth in these Bylaws:

(a) To enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner or Owners, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; and/or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.2 These remedies are in addition to other remedies provided in the Declaration and these Bylaws, the Act or in any other applicable laws.

8. Accounting.

8.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

8.2 A budget for each fiscal year consisting of at least the following information shall be adopted by the Board and distributed to all Members not less than 30 days prior to the beginning of the fiscal year to which the budget applies:

(a) Estimated revenue and expenses on an accrual basis.

(b) The amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Areas and Facilities and for contingencies.

(c) An itemized estimate of the current replacement costs of, and the estimated remaining life of, and the methods of funding to defray the costs of future repair, replacement or additions to the major components of the Common Areas and Facilities.

(d) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and Facilities.

8.3 Unless the Association, by a majority of the Total Votes of the Association at the meeting of the Association held after distribution of the proposed budget, rejects the budget, the budget shall be deemed ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

8.4 Within sixty (60) days after the last day of the month closest in time to six (6) months from the date of closing of the first Unit sold (the "Accounting Date"), the Board shall distribute to the Owners: (i) a balance sheet as of the Accounting Date, and (ii) an operating statement for the period from the date of the first closing to the Accounting Date. This operating statement shall include a schedule of Assessments received and receivable, identified by Unit and the name of the person or entity assessed.

8.5 The Board shall distribute to the Owners an annual report, consisting of the following, within one hundred twenty (120) days after the close of each fiscal year:

(a) A balance sheet as of the end of the fiscal year.

(b) An operating (income) statement for the fiscal year.

(c) A statement of changes in financial position for the fiscal year.

(d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a certified public accountant licensed by the State of Utah.

(e) Any other disclosures required by applicable state law.

If the annual report referred to in this Section is not prepared by an officer of the Association, then it shall be accompanied by a certificate of the person preparing the report that the statements were prepared from the books and records of the Association without independent audit or review.

8.6 The Board (or the Manager, if so delegated by the Board) shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's operating accounts to be made and review the same

(b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts.

8.7 The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Board and of committees of the Board and all other records of the Project or Association maintained by the Association or Manager shall be made available for inspection and copying by any Member or his duly appointed representative at any reasonable time and for a purpose reasonably related to his interest as an Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Board to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Association may, as a condition to permitting an Owner to inspect the membership register or to its furnishing information from the register, require that the Owner agree in writing not to use, or allow the use, of information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association. The Board shall establish reasonable rules with respect to:

(a) notice to be given to the custodian of the records by the Owner desiring to make the inspection or obtain copies;

(b) hours and days of the week when such an inspection may be made;

(c) payment of the cost of reproducing copies of documents requested by an Owner.

Every member of the Board shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Board member agree in writing not to use, or allow the use of, the information from the membership

register for commercial or other purposes not reasonably related to the business of the Association and the Board member's interest in such Association.

9. **Special Committees.** The Board by resolution may designate one or more special committees, each committee to consist of two (2) or more of the members of the Board, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Board. All special committees shall keep regular minutes of their proceedings and report the same to the Board when required. The members of such special committee or committees designated shall be appointed by the Board or the President. The Board or the President may appoint Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

10. **Rental or Lease of Units.**

10.1 Any Owner who rents or leases his Unit shall file with the Board a copy of the rental or lease agreement. The provisions of **Section 7** of these Bylaws shall apply with equal force to renters or lessees of Units.

10.2 Any Owner who rents or leases or otherwise permits any other person to utilize his Unit shall be responsible for the conduct of his tenants or occupants, and upon written notice from the Board or the Manager, said Owner shall be responsible for correcting violations of the Declaration, Bylaws or rules and regulations committed by such tenants or occupants.

10.3 If an Owner fails to correct violations by tenants within 72 hours of such notice, the Board or Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as Assessments under the Declaration.

10.4 The power of the Board or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting, leasing or otherwise permitting any other person to utilize his Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Board and the Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Board or Manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Owner.

11. **Amendment of Bylaws.** Except as otherwise provided in the Act, the Declaration or these Bylaws, these Bylaws may be amended by the vote or written assent of Owners holding a majority of the Total Votes of the Association. Provided, however, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Board shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Owners, and the amendment shall be effective upon recording.

Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of these Bylaws to comply with all then applicable laws, rules and regulations to which the Project is legally subject.

12. **Severability.** The provisions hereof shall be deemed independent and severable, and the invalid or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

13. **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

14. **Effective Date.** These Bylaws shall take effect upon adoption by the Board.