

AFTER RECORDING PLEASE RETURN TO: \_\_\_\_\_

Pinehurst At 800 North, L.L.C.  
c/o Bruce R. Dickerson  
1013 South Orem Blvd.  
Orem, UT 84058

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ENT 25149:2002 PG 1 of 28  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2002 Mar 05 9:21 am FEE 68.00 BY SS  
RECORDED FOR PINEHURST AT 800 NORTH LLC

**DECLARATION OF CONDOMINIUM  
(Including Owner Association Bylaws)**

**OF**

**PINEHURST PLAZA RETAIL CONDOMINIUMS**

**(A Convertible Space Condominium Project)**  
Orem, Utah

**THIS DECLARATION OF CONDOMINIUM** is made as of this 1 day of March, 2002, by Pinehurst At 800 North, L.L.C., a Utah limited liability company ("Declarant"), pursuant to the provisions of Title 57, Chapter 8 of the *Utah Code*, as amended, known as the Condominium Ownership Act (the "Act").

**RECITALS:**

- A. Declarant is the developer and owner of record of that certain Tract of land, more particularly described in Article II hereof, together with improvements thereon.
- B. Declarant is in the process of constructing upon the Tract certain improvements so as to enable its use and operation pursuant to the Act as a convertible space retail condominium project as set forth on the Record of Survey Map.
- C. Declarant desires, by recording this Declaration, to submit the Tract and all improvements to be constructed thereon to the provisions of the Act as a convertible space retail condominium project to be known as "Pinehurst Plaza Retail Condominiums".
- D. Declarant intends that fee title to the individual Units contained in the Project, together with an undivided percentage interest in and to the Common Areas and Facilities appurtenant to such Units, be subject to the covenants, conditions, restrictions, limitations, and easements herein set forth.

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

## ARTICLE I

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### Definitions

When used in this Declaration (including that portion hereof captioned **RECITALS**) each of the following terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act:

**Act** shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, *Utah Code* (1953), as the same may be amended from time to time, including any successor statutory provisions hereto.

**Assessment** shall mean the amount which is to be levied and assessed against each Owner and the Owner's Unit and paid to the Association for Common Expenses, whether Annual, Special or Specific Assessments, all as later defined.

**Association of Unit Owners** or **the Association** shall mean the Unit Owners acting as a group in accordance with this Declaration and the Act.

**Building** shall mean and refer to the main structure described on the Map of the Project and containing one or more Units and Convertible Spaces.

**Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles XI, XII, and XIII as authorized by Section 57-8-15 of the Act.

**Common Areas** or **Common Areas and Facilities** shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and all lawns, landscaping, decorative gardens or fences, outdoor lighting, sidewalks, walkways, parking areas and private ways located thereon, but excluding all individual Condominium Units and Convertible Spaces as herein defined;

(b) All Common Areas and Facilities, as above defined, which may be designated as such on the Survey Map, and all Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Map;

(c) All foundations, columns, beams, girders, interior loadbearing walls, and supports of the Building;

(d) Any halls, corridors, stairs, stairways, entrances, exits, and landings which are designed for the use of more than one Unit and which are not contained within a Unit;

(e) Those portions of the exterior walls of the Building (excluding glass in windows) beyond the exposed face of the dry wall on the Unit side of such walls; those portions of all walls which enclose Units and divide them from corridors, stairs and other Common Areas and which are located beyond the unfinished surface on the Unit side of

such walls; those portions of all walls located between the Units within the unfinished surfaces of such walls on either side thereof; the floors; and the roof;

(f) All installations and equipment designed and intended to provide utility services for common use, including (but not limited to) telephone, electricity, gas, water, sewer, heat, ventilation and air conditioning (including all pipes, ducts, vents, wires, cables, and conduits designed and intended for common use in connection therewith), whether or not located within the horizontal and vertical boundaries of a Unit, but excluding from such installations and equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Unit and designed and intended for the sole use of such Unit;

(g) All apparatus and equipment designed and intended for common use such as (but not necessarily limited to) pumps, motors, fans, clocks, compressors and control apparatus and equipment, whether or not located within the horizontal and vertical boundaries of a Unit, but excluding from such apparatus or equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Unit and designed and intended for the sole use of such Unit;

(h) All cleaning and maintenance equipment and other personal property at any time leased, acquired, owned, or held by the Association for the common use or benefit of all Owners; and

(i) All other parts of the Project designed and intended for, or normally in, common use or necessary or convenient to the existence, maintenance, safety, or management of the Project.

The term "common use", as used in the above definition of Common Areas includes, without limitation, use by or for any two or more Units.

**Common Expenses** shall mean all items and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration the Rules and Regulations, and such other determinations and agreements pertaining to the Condominium Project as the Management Committee or the Association may from time to time adopt.

**Condominium Project or Project** shall mean and refer to Pinehurst Plaza Retail Condominiums as the same shall exist from time to time.

**Condominium Unit or Unit** shall mean any of the individual spaces which is designated as a numbered Unit on the Record of Survey Map. Notwithstanding any information on the Record of Survey Map to the contrary, each Unit is or shall be deemed to be bounded by the interior surfaces of the walls, floors, and ceilings, and the exterior surfaces of all window glass and doors on or along the perimeter boundaries of such individual space, as said boundaries are shown on the Map. All interior portions of walls and that portion of floors and ceilings under or over them on or along the perimeters of a Unit shall constitute a part of the Common Areas and Facilities. A Unit shall also include any non-load bearing walls and partitions which are wholly confined within its vertical and horizontal perimeters; provided, however, that a Unit shall not

include any part or portion of the Common Areas defined in paragraphs (c), (f), or (g) contained in the above definition of Common Areas, but shall include all installations, equipment, apparatus, and items affixed or connected thereto of the character contemplated by said paragraphs (f) and (g) which are located within the exterior boundaries of such Unit and which are designed for the sole use of such Unit. A Unit shall also include all fixtures confined within its vertical and horizontal perimeters and intended for the sole use of such Unit. The exterior surface of a window glass or door shall mean the plane at which such surface is located when the window or door is closed.

**Convertible Space** shall mean and refer to any portion of the Building labeled as such on the Map which may be converted into one or more Units or Common Areas and Facilities in accordance with the Act and the Declaration.

**Declarant Control Period** shall mean the period of time established by the provisions of Section 11.03 in which Declarant shall manage and control the Project.

**Declaration** shall mean and refer to this Declaration of Condominium (Including Owner Association Bylaws) as the same may hereafter be amended in accordance with the Act and the provisions hereof. Any ambiguities, omissions or conflicts herein shall be construed to comply with the provisions of the Act.

**Limited Common Areas and Facilities or Limited Common Areas** shall mean and refer to those Common Areas, if any, designated in this Declaration or the Act, or shown on the Map, as reserved for the exclusive use of a certain Unit or Units to which the same are physically attached or, in the case of equipment, to which they provide service to the exclusion of other Units.

**Management Committee or Committee** shall mean and refer to the Committee as provided in this Declaration charged with and having the responsibility and authority to administer the Project and to make and to enforce the Rules and Regulations covering the operation and maintenance thereof.

**Manager** shall mean an individual or entity to whom the Management Committee may delegate any or all of its duties relative to the Project.

**Mortgage** shall mean a recorded first mortgage or first deed of trust encumbering a Unit which has priority over all other mortgages and deeds of trust encumbering the same Unit; and **Mortgagee** shall mean the mortgagee or beneficiary named in a Mortgage.

**Owner or Unit Owner** shall mean and refer to the person or persons owning a fee simple interest in a Condominium Unit. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Committee in writing of such agreement, be considered the Unit Owner for all purposes.

**Public Records** shall mean and refer to the Office of the County Recorder of Utah County, Provo, Utah.

**Record of Survey Map, Survey Map or Map** shall mean and refer to the Record of Survey Map entitled "Pinehurst Plaza Retail Condominiums (A Convertible Space Condominium Project), Orem City, Utah County, Utah", prepared by Roger D. Dudley, a Utah registered land surveyor holding Certificate No. 147089, executed and acknowledged by Declarant and recorded concurrently in the Public Records with this Declaration, as said Map may hereafter be supplemented, modified or amended in accordance with the Act and the provisions of this Declaration. Such terms shall also include any **Supplemental Record of Survey Map** as defined and required by the Act for the conversion of Convertible Space to one or more Units.

**Rules and Regulations** shall mean and refer to those Rules and Regulations authorized, adopted and promulgated to the Owners by the Management Committee pursuant to Section 11.10.

**Tract** shall mean and refer to the real property described in Section 2.01 and which ARTICLE II of this Declaration submits to the Act.

**Unit Number** shall mean and refer to the number, letter or combination thereof which designates a Unit on the Map.

## ARTICLE II

### Submission of the Project

2.01 **Submission, Description, and Reservations.** Declarant hereby submits to the provisions of the Act the real property and improvements situated in Orem, Utah County, Utah, more particularly described in **Exhibit A**, attached hereto and made a part hereof, including a vacation of Lot 4, Plat "B", Pinehurst Plaza Subdivision, according to official plat thereof:

**TOGETHER WITH** all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

**RESERVING UNTO DECLARANT**, however such easements and rights of ingress and egress over, across, through, and under the above-described Tract and any improvements (including any structure) now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete the Building and Units and all of the other improvements described in this Declaration or in the Survey Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete Units from any Convertible Space; and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Tract, or any improvement thereon, is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the Public Records.

**ALL OF THE FOREGOING IS SUBJECT TO** all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental

authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Tract at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

**2.02 Division of Project into Condominium Units and Convertible Space; Ownership Interests.** The Project is hereby divided into four Condominium Units and Convertible Space, as set forth on the Map. In addition to fee title to a Unit, each Unit's Owner shall have an appurtenant, undivided ownership interest in and to the Common Areas and Facilities to the extent set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

### ARTICLE III

#### Convertible Space

**3.01 Convertible Space.** Declarant reserves the right at Declarant's option, exercisable without the consent of any Unit Owner, to convert any portion of the Convertible Space into one or more Units or Common Areas, from time to time, at Declarant's choosing and without regard to any order of conversion of such Convertible Space.

**3.02 Convertible Space Conversion.** The formation of any Units or Common Areas from the conversion of any Convertible Space shall be deemed to occur upon the simultaneous recordation in the Public Records of a numbered Supplemental Record of Survey Map and of a similarly numbered amendedment to this Declaration. Such instruments shall contain the information required by the Act for conversion of Convertible Space, including an amendment to **Exhibit B**, identifying by number each Unit formed out of Convertible Space, and allocating to each such Unit a portion of the undivided ownership interest in the Common Areas and Facilities appertaining thereto as a result of such conversion.

**3.03 Unconverted Convertible Space.** Pursuant to the Act, Convertible Space remaining unconverted shall be treated for all purposes herein as a single Unit unless and until it is converted. Declarant makes no representations as to the timing of any future conversions to Units of Convertible Space within the Project, nor as to the sizes or uses (except as may be limited pursuant to the provisions of ARTICLE VII) of any Units resulting from any such future conversions.

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## ARTICLE IV

### Improvements

4.01 **Improvements.** The improvements included in the Project are now or will be located on the Tract and all of such improvements are described on the Map, including the Building, the number of Units and Convertible Spaces, their respective dimensions, and other significant facts relating thereto.

4.02 **Description of Building and Units.** The Project will have a single Building with approximately 60,323 square feet of space measured from its exterior walls, and slab on grade floor. The roof is an open web steel truss structure. Side and rear walls of the Building are of concrete block masonry construction. The front of the Building is a steel moment frame structure with glass store front infill. Rest rooms and HVAC systems are contained within each Unit.

4.03 **Description and Legal Status of Units.** The Map reflects the alphabetical designation of each Unit, its location, and dimensions from which its areas may be determined, the Limited Common Areas, if any, which are reserved for its use, and the Common Areas and Facilities of the Project. Each Unit shall be legally designated and described by an alphabetical Unit designation. Numbers may be assigned to the Units by the Management Committee or the City of Orem for purposes of designating street or mailing addresses.

4.04 **Common Areas.** Common Areas and any Limited Common Areas contained in the Project are described as to type of kind in ARTICLE I hereof and described, where applicable, on the Map. Neither the ownership of undivided interests in and to the Common Areas, nor the right of exclusive use of a Limited Common Area, shall be separated from the Unit or Units to which they appertain, or to which they are a part, and even though not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate, as will any separate obligations or Assessments pertaining thereto.

4.05 **Conveyance Description of a Unit.** Each conveyance or contract for the sale of a Unit, and every other instrument affecting title to, or lease or encumbrance of a Unit, may describe that Unit by the Unit number shown on the Map, with the appropriate reference to the Map and to this Declaration, as each shall appear in the Public Records in substantially the following form:

Unit \_\_\_\_\_, contained within **Pinehurst Plaza Retail Condominiums** as the same is identified in the Record of Survey Map therefor recorded in Utah County, Utah, as Entry \_\_\_\_\_ (as said Record of Survey Map may have heretofore been amended or supplemented); and in the **Declaration of Condominium, Pinehurst Plaza Retail Condominiums (Including Owner Association Bylaws)** recorded in Utah County, Utah as Entry \_\_\_\_\_, as said Declaration may have heretofore been amended, **TOGETHER WITH** the undivided ownership interest in and to the Common Areas and Facilities appurtenant to said Unit, as more particularly described in said Declaration (as said Declaration may have heretofore been amended).

Such description will be construed to describe the Unit, together with its appurtenant undivided ownership interest in and to the Common Areas and Facilities, as the same are established and identified in the Declaration and on the Map, and to incorporate all the rights and limitations incident to ownership of a Unit, as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this Declaration.

## ARTICLE V

### Nature and Incidence of Ownership

5.01 **Holding Title.** Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the state of Utah, including, but without limitation, joint tenancy or tenancy in common.

5.02 **No Separation.** No part of a Unit, nor any part of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of condominium ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy any Limited Common Areas appurtenant to such Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together, and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law, the Act or by this Declaration.

5.03 **Membership in Association.** Each Unit Owner, including Declarant, shall be a Member of the Association of Unit Owners. Membership in the Association shall be mandatory, shall be appurtenant to, and shall not be separated from the Unit to which it appertains.

5.04 **Undivided Interest in Common Areas and Facilities.** The Common Areas and Facilities shall be owned in common by Declarant and all the Owners of Units in the ratio of their undivided appurtenant interest as reflected in Exhibit B.

5.05 **No Partition.** No Unit Owner may bring action for partition of such Owner's Unit. This Section 5.05 shall not be deemed to limit or impair Declarant's ability to convert any Convertible Space into one or more Units, as provided herein or by the Act.

5.06 **Use of Common Areas and Limited Common Areas.** Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and the exclusive right to use and enjoy any Limited Common Areas designated herein, or on the Map, or inferred by the Act, which appertain to such Owner's Unit.

5.07 **Duty of Owner to Pay Taxes on Unit Owned.** It is understood that pursuant to the Act each Unit (and its percentage of undivided ownership interest as reflected in Exhibit B) in the Project is subject to separate assessment and taxation of each taxing authority and special district which has such jurisdiction over the Project for all types of taxes and assessments authorized by law; and, that as a result thereof, no taxes will be assessed or levied against the Project, as such. Accordingly, each Unit Owner, shall pay and discharge any and all taxes and assessments assessed against such Owner relative to his Condominium Unit. Any such taxes or Assessments assessed against Convertible Space shall be paid by Declarant.

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



**5.09 Unit Maintenance.** Each Owner shall, at such Owner's sole cost and expense, maintain, repair, paint, re-paint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of such Owner's Unit and all walls, ceilings, floors, windows, and doors within such boundaries. In addition to decorating and keeping the interior of such Unit in good repair and in a clean and sanitary condition, the Owner shall be responsible for the maintenance, repair or replacement of any plumbing or lighting fixtures, or other appliances, equipment or fixtures that may be in, or connected with such Unit.

**5.10 Maintenance of Limited Common Areas.** Each Owner shall keep any Limited Common Areas designed for use in connection with such Owner's Unit in a clean, sanitary and attractive condition at all times, notwithstanding any duty or obligation of the Committee, on behalf of the Association, to maintain and repair the Common Areas and Limited Common Areas pursuant to the provisions of ARTICLE XI.

**5.11 Division of Utility Costs.** The cost of all utility or municipal services (including, without limitation, water, sewer, garbage collection, telephone, electrical, and gas) which are separately metered (if metering is applicable to the service in question) and billed by the suppliers concerned to the individual Units, shall be paid by the Owner of the respective Unit. The cost of all such services which are not separately metered and billed to such individual Units, but which benefit all Units and the Project as a whole, shall be paid by the Association as a Common Expense. Notwithstanding anything to the contrary contained within the preceding portion of this Section 5.11, in the event that any utility or municipal service is separately metered (if metering is applicable to the service in question) and billed to one or more Units, and a portion of such service benefits in whole or in part any other Unit, or the Common Areas, the Association shall reimburse or credit the Owner of the Unit so billed for the cost of such portion; the determination of such portion, and the cost related thereto which shall be borne by the Association as a Common Expense, shall be made by the Association in a fair and reasonable manner on the basis of the best information reasonably available at the time, and shall be final and binding upon all Unit Owners.

## ARTICLE VI

### Easements

**6.01 Encroachment.** If any part of the Common Areas encroaches, or shall hereafter encroach, upon a Unit or Units, an easement for such encroachment, and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches, or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for its maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building on the Tract, by error in the Map, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof.

**6.02 Repair of Common Areas.** If any of the Common Areas (including any Limited Common Area) are or may be located within any of the Units, or may be conveniently accessible only through such Unit, the Owners of the other Units shall have the irrevocable right, to be exercised by the

Committee as their agent, to have access to such Unit and to all Common Areas, from time to time, during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Areas located therein, or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas, or as a result of emergency repairs within another Unit at the instance of the Committee, or of Unit Owners, shall be an expense of all the affected Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, his guests or invitees, then such Owner shall be financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Committee by Assessment pursuant to this Declaration.

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

**6.04 Utility Services.** As reflected on the Map, there is a utility easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

**6.05 Right of Ingress, Egress, and Support.** Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to such Owner's Unit, and to any Common Area designated for use in connection with such Unit. Each Owner shall have the right to the horizontal, vertical and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

## ARTICLE VII

### Restrictions

**7.01 Retail Commercial Use.** The Tract is zoned or permitted for retail commercial usage pursuant to Orem City Ordinances, and all Units and Unit Owners are subject to the uses and restrictions imposed thereby, including, but not limited to, occupancy and parking restrictions. All Units within the Project shall be used exclusively for retail uses commonly found in first-class commercial complexes of the nature of the Project and for no other purposes; provided, that only Unit G within the Project may be used for the practice of dentistry. No Unit within the Project shall be used for manufacturing facilities or residential uses.

**7.02 Leasing.** A Unit Owner may lease his Unit for any term evidenced by a writing executed by the Owner and the lessee/tenant and containing a specific statement that such lease is subject to the provisions of this Declaration. An Owner may not lease less than his entire Unit without the prior written consent of the Management Committee.

**7.03 Restrictions Concerning Common Areas.** There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees, without the prior written consent of the Management Committee. The Management Committee may, by Rules and Regulations, prohibit or

limit the use of the Common Areas and Facilities as may be reasonably necessary to protect the interests of all the Owners, or the Units, or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Management Committee, except as specifically provided herein. Nothing shall be altered on, constructed on, or removed from the Common Areas except upon prior written consent of the Management Committee.

**7.04 Miscellaneous Restrictions.** Nothing shall be done or kept in any Unit, or in the Common Areas, or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof, or increase the rate of the insurance on the Project, or any part thereof, over what the Management Committee, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in any part of the Common Areas which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body. No damage to, or waste of, the Common Areas, or any part thereof, shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive or offensive activity shall be carried on in any Unit, or in any part of the Common Areas, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner, or to any person at any time lawfully occupying a Unit.

**7.05 No Pets or Animals.** No pets or animals of any kind or nature whatsoever shall be permitted in any Unit, in the Common Areas, or in any other part of the Project; provided, however, that the provisions of this Section 7.05 shall not prohibit the establishment and operation of a retail pet store or small pet veterinary clinic.

**7.06 No Violation of Rules and Regulations.** No Owner shall violate the Rules and Regulations for the use of the Units and the Common Areas as adopted and promulgated to the Owners, from time to time, by the Management Committee as provided in Section 11.10.

**7.07 Restrictions on Alterations.** No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Management Committee, or an architectural or design review committee established by it.

**7.08 Declarant's Right to Sell Units.** Until Declarant has completed and sold all of the Units and converted all Convertible Spaces to Units, the Unit Owners who have purchased Units from Declarant or prior Owners shall not interfere with the completion of the contemplated construction and sale of the remaining Units. Declarant may make such use of the unsold Units, Convertible Space and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the display of signs.

**7.09 Restrictions on Signs.** No signs, flags, or advertising devices of any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained at any place on the exterior of the Building, or on any other part of the Project, without the prior inspection and written approval of the Management Committee, except as may be necessary temporarily to caution or warn of danger. All signage, whether original or replacement, shall be professionally made and shall be of the style and theme established by Declarant or the Committee for the Project as a whole. Any sign, banner, or similar devices located in the Project shall comply with applicable zoning and sign ordinances of Orem City, Utah.

## ARTICLE VIII

### Insurance

8.01 **Insurance and Bonds.** The Management Committee shall secure, or caused to be secured and maintained at all times, the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of the entire Project, **including the Building and Units but excluding contents of Units.** Proceeds payable pursuant to such policy or policies shall be made payable to the Committee and all persons holding an interest in the Project, or any of the Units, as their interests may appear.

(b) An appropriate fidelity bond coverage for any person or entity (other than Declarant during the Declarant Control Period) handling funds of the Management Committee, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Management Committee, but in no event less than a sum equal to three months' aggregate Annual Assessments on all Units, plus reserve funds. The provisions of this Section 8.01 (b) may be waived in a writing signed by all Owners.

(c) A policy or policies insuring the Committee, the Manager, and the Unit Owners against any liability incident to the ownership, use or operation of the Project, or of any Unit, which may arise among themselves, to the public, and to any invitees or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall not be less than \$1,000,000 for any person injured, \$2,000,000 for all persons injured in any one accident, and \$1,000,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

8.02 **Additional Insurance Provisions.** The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance described above, the Committee shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with retail condominium projects similar to the Project in construction, nature and use.

(b) The Committee shall have the authority to adjust losses.

(c) Insurance secured and maintained by the Committee shall not be brought into contribution with insurance held by the individual Unit Owners, or their Mortgagees.

(d) Each policy of insurance obtained by the Committee shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Committee, the Manager, the Unit Owners, and their respective employees, agents, and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Committee or of the Manager, without prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(e) Each Unit Owner shall, at his own expense, obtain and maintain in force at all times, policies of hazard and casualty insurance relative to his Unit's contents, and liability insurance relative to such Owner's business operations conducted within his Unit.

(f) The cost for the insurance required under Section 8.01(a) to cover Units shall be allocated and assessed to Unit Owners in proportion to their respective undivided ownership interests, as provided in **Exhibit B**.

## ARTICLE IX

### Damage, Destruction and Restoration

In the event of damage or destruction to part or all of the improvements in the Condominium Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as quickly as possible.

(b) If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out, and, upon approval of the Unit Owners, all Owners shall be assessed for any deficiency in proportion to their respective undivided ownership interests as set forth in **Exhibit B**.

(c) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners, within one hundred (100) days after the destruction or damage, vote to repair or reconstruct the affected improvements, restoration and assessment therefor shall be accomplished in the manner directed under subsection (b), above.

(d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within one hundred (100) days after the destruction or damage, vote to repair or reconstruct the affected improvements, the Management Committee shall promptly record a notice in the Public Records setting forth such facts. Upon the recording of such notice, the provisions of

Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this ARTICLE IX shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this ARTICLE IX regarding the extent of the damage to or destruction of Project improvements, shall be made by three qualified appraisers selected by the Management Committee. The decision of any two such appraisers shall be conclusive.

## ARTICLE X

### Mortgages and Mortgagee Protection

10.01 **Notice of Mortgage.** Any Owner who mortgages his Unit shall furnish the Committee the name and address of such Mortgagee, and the Committee shall maintain such information in a book entitled "Mortgages of Units." The Committee shall report to such Mortgagee any unpaid Assessments due from the Owner of such Unit at the same time as the Committee makes demand on the Owner thereof for payment of such Assessment. Each Mortgagee shall also be entitled to written notification from the Committee of any other default by its Owner/Mortgagor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within 30 days after written notice to such Owner/Mortgagor by the Committee specifying such default.

10.02 **Right to Examine.** A Mortgagee shall have the right to examine the books and records of the Association and Committee upon request, and to require annual reports of the financial status of the Association.

10.03 **Notice of Damage.** In the event of substantial damage to, or destruction of, any Unit or any part of the Common Areas, the Mortgagee of any Unit shall be entitled to timely written notice of any such damage or destruction. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

10.04 **Notice of Default.** Any Mortgagee is entitled to written notification from the Management Committee of any default by the Owner of such Unit in the performance of any obligation under the Declaration which is not cured within 30 days.

10.05 **Effect of Foreclosure on Liens.** Each Mortgagee of a Unit who comes into possession of such Unit by virtue of foreclosure of its Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any unpaid claims or Assessments and charges against the Unit which accrued prior to the time such holder comes into 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 Assessments or charges to all Units in the Project, including the mortgaged Unit.

10.06 **General Mortgagee Protection.** Unless all of the Mortgagees of Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall:

(a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain;

(b) Except as provided in Section 3.02, change the pro-rata interest or obligations of any Unit for (i) purposes of levying Assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the percentage share of undivided ownership interest of each Unit in the Common Areas;

(c) Make any material amendment to the Declaration or to the Bylaws of the Association, including but not limited to, any amendment which, but for the provisions of Section 3.02, would change the percentage of undivided ownership interest of the Unit Owners in the Common Areas;

(d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this Section 10.06; or

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided in this ARTICLE IX, or by the Act in cases of substantial loss to the Units or the Common Areas of the Project.

## ASSOCIATION BYLAWS

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

### ARTICLE XI

#### Bylaws - Management Committee

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

(a) The authority, without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;

(b) The authority to execute and record, on behalf of all Unit Owners, any amendments to the Declaration or the Map which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments, as set forth in Section 14.03 of this Declaration;

(c) The power to sue and be sued;

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

(e) The power and authority to convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage;

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

(g) The authority to promulgate such reasonable Rules and Regulations, and procedures, as may be necessary or desirable to aid the Committee in carrying out its functions, or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners;

(h) The authority to engage the services of a Manager;

(i) To establish and incorporate at any time a Utah nonprofit corporation pursuant to then current statutes, with a board of directors or trustees, and to transfer to such corporation and board all of the Committee's powers and authority as are set forth and established pursuant to the provisions of the Declaration, these Bylaws and the Act; and

(j) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners. Any instrument executed by the Management Committee relating to the Common Areas of the Project that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who, in good faith and for value, relies upon said instrument.

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

**11.03 Declarant Control Period.** Until the happening of the first of the following two events, the Declarant may appoint and remove some or all of the members of the Management



Committee (who need not be Owners), or some or all of the officers of the Association, or may exercise the powers and responsibilities otherwise assigned by the Declaration and the Act to the Association, its officers, or the Management Committee:

- (a) the expiration of three years after conveyance of title to the first Unit purchaser; or
- (b) the expiration of 120 days following the conveyance of Units to which at least seventy-five percent (75%) of the undivided ownership interest in the Common Areas and Facilities appertain.

Provided, however, that Declarant may waive such rights, in whole or in part at any time prior to the occurrence of either or both of the aforesaid events by (i) giving notice to Unit Owners of such waiver in written recordable form; and (ii) filing for record in the Public Records a written notice of waiver of such right, whereupon Unit Owners shall promptly hold a meeting to elect a new Management Committee, it being established hereby that the control of the Unit Owners in the Management Committee shall automatically vest 30 days following the date such waiver is recorded.

**11.04 Management Committee: Owner Control, Composition, Election, Vacancies.** Subject to the provisions of Section 11.03, above, the Committee shall be composed of three members, one to be elected to a three-year term, one to a two-year term, and one to a one-year term. As members' terms expire, new members shall be elected for three-year terms. Members shall serve on the Committee until their successors are elected. Committee members must be Owners or officers, directors, agents or employees of non-individual Owners. Vacancies in the Committee membership may be filled by appointment by the remaining members or member of the Committee, and said appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the member they were appointed to replace. The Association, upon approval by the Owners, may increase the number of members on the Committee to five, at any annual meeting of Owners.

**11.05 Rights and Duties.** On behalf of the Association, the Management Committee, subject to the rights and duties of the Unit Owners, this Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project, including the obligation to provide for maintenance of the Common Areas.

**11.06 Exterior Maintenance.** In connection with its duty to maintain Common Areas, the Committee will provide maintenance upon the exterior of the Building and Units, and the Common Area as follows: Paint, repair, replace, or otherwise care for as needed, Building roof, gutters, downspouts, exterior Building surfaces, trees, shrubs, grass, walks, driveways, parking areas, and other exterior improvements, except glass surfaces, unless such surfaces are part of Common Areas. Costs of such maintenance items shall be Common Expenses.

**11.07 Right of Delegation to Manager.** The Management Committee may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the Manager's agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

**11.08 Payment for Services, Etc.** The Management Committee may obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation and function of the Project, including the enforcement of this Declaration. The Committee may also hire other persons to furnish snow removal, ground maintenance and other common services to the Project.

**11.09 Personal Property Ownership and Use.** The Management Committee may acquire and hold for the use and the benefit of all of the Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in and to the Common Areas and transferable only with the transfer of a Unit.

**11.10 Rules and Regulations.** The Management Committee may make reasonable Rules and Regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. The Management Committee may suspend any Owner's voting rights at any meeting of Unit Owners for periods during which such Owner fails to comply with such Rules and Regulations, or with any other obligations under this Declaration, including failure to pay Assessments. The Management Committee may also take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations, or to obtain damages for noncompliance, all to the extent provided by law.

**11.11 Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of, the Building as a whole, or of the Common Areas by the Management Committee without the prior approval of the Unit Owners.

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

**11.13 Architectural or Design Control.** Except for original construction by Declarant, the Committee shall act in all matters pertaining to architectural or design control of the Project. The Committee shall establish rules and procedures for submitting plans for review and approval of any proposed construction, alteration, remodeling, etc., involving the exterior of any Unit. The Management Committee may establish a committee of Owners to act pursuant to the provisions of this Section 11.13.

**11.14 Committee Meetings, Quorum, Board Action.** The Committee shall establish its rules for meetings, whether regular or special. A majority of current Committee members shall constitute a quorum, and the action of a majority of those attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Committee. Action by consent shall require the unanimous consent of all current Committee members.

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## ARTICLE XII

### Bylaws - Association Voting, Meetings and Officers

12.01 **Voting.** The Association shall have a total of 10,000 votes. The number of votes appurtenant to each Unit shall be as set forth in **Exhibit B** hereto as it may, from time to time, be amended. As used throughout this Declaration, the phrases "vote of the Owners", "approval of the Owners", "Owners vote", "consent of the Owners", "by the Owners", or words of similar import, shall be deemed to require a majority of the total voting power of all Owners, including Declarant.

12.02 **Multiple Ownership.** In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the number of appurtenant votes, as reflected on **Exhibit B**, be cast for such Unit with respect to any issue. Votes cast at any Association meeting, or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Unit, unless an objection is made at the meeting, or in writing by another Owner of the same Unit, in which events no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

12.03 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Management Committee in its notice therefor.

12.04 **Annual Meetings.** Annual Association meetings of Owners shall be held each year beginning in the year 2002 on such day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than that in which the first annual meeting is held may be chosen if it is deemed by the Owners to be more convenient. At such annual meetings there shall be elected members of the Management Committee, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before such meeting.

12.05 **Special Meetings.** The President shall call a special meeting of the Association as directed by a resolution of the Management Committee or upon the request of Owners holding at least twenty-five percent (25%) of the total votes of the Association having been presented to the Committee. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by the Owners, either in person or by proxy.

12.06 **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place of the meeting, to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

12.07 **Quorum.** Owners present at any meeting of Members duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Members collectively be entitled to cast in person or by proxy at least a majority of the total Association votes eligible to be voted.

12.08 **Adjourned Meetings.** If any Association meeting of Owners cannot be organized because a quorum is not present, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours from the time the original (or a previously

adjourned) meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required for the previously called (or adjourned) meeting.

**12.09 Officers.** The Association shall have a President, a Vice President and a Secretary/Treasurer each of whom shall be elected by and from the Management Committee. Only the offices of Secretary and Treasurer may be filled by the same person. The officers, subject to the power of Declarant as set forth in Section 11.03, shall be elected by the Management Committee in an organizational meeting of the Committee immediately following each annual Association meeting of Owners at which the new Management Committee or any of its members has been elected.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Management Committee. He shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Committee.

(c) **Secretary/Treasurer.** The Secretary/Treasurer shall: keep the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association; have charge of such books and records as the Management Committee may direct; perform all duties incident to the office of secretary of a similar type association; have responsibility for Association funds and be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association; and be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Management Committee.

## ARTICLE XIII

### Bylaws - Assessments

**13.01 Agreement to Pay Assessments.** Each Unit Owner, by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with all other Unit Owners, and with the Association and the Management Committee, to pay to the Association the Annual Assessments and any Special Assessments and Specific Assessments described in this ARTICLE XIII, together with late payment fees, interest and costs of collection, if and when applicable, as the same may apply to such Owner and his Unit. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the Assessment falls due. No Unit Owner may exempt himself or his Unit from liability for payment of Assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments, late payment fees, interests and costs of collection, including reasonable attorneys' fees, which shall be a charge on the

Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

**13.02 Purpose of Assessments.** Assessments levied by the Management Committee for the Association shall be used exclusively for the purpose of promoting the Project, the interests of the Owners therein, and paying Common Expenses properly incurred by the Association or Management Committee in the maintenance, operation and carrying of the Common Areas. The use made of funds obtained from Assessments may include, but shall not be limited to, payment of the cost of: insurance premiums on policies required of the Association hereunder; maintenance (including snow removal), repair, and improvement of the Common Areas; taxes or special assessments, if any, levied by governmental authorities; legal and accounting fees; any deficit from a previous period; establishment and funding of a reserve to cover major repair or replacement of improvements within (or deemed to be) Common Areas; and any expense necessary or desirable to enable the Management Committee to perform or fulfill its obligations, functions or purposes pursuant to the Declaration, the Act, these Bylaws, or the Rules and Regulations.

**13.03 Annual Assessments.** Annual Assessments shall be computed and assessed against all Units in the Project based upon advance estimates of the Committee's cash requirements to provide for payment of Common Expenses as set forth in Section 13.02, which costs shall be apportioned among the Units in proportion to their respective undivided interests in and to the Common Areas as set forth in **Exhibit B**. However, for purposes of such apportionment, Declarant shall be deemed to own the undivided interest in the Common Areas based only upon Units which have been completed and used by Declarant for rental purposes, or as models for marketing purposes, or fully completed ready for move-in (carpeted and painted) but not yet conveyed by Declarant to third party grantees. During the Declarant Control Period, if Assessments collected fail to adequately meet the Common Expenses, Declarant shall pay any shortfall.

**13.04 Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year ending December 31; provided the first fiscal year shall begin on the date of recordation of this Declaration in the Public Records. On or before December 15 of each fiscal year, the Committee shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. Each budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal period.

**13.05 Notice and Payment of Annual Assessments.** Except with respect to the first fiscal period ending December 31, 2002, the Association shall notify each Owner as to the amount of the Annual Assessment against his Unit on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly instalments, one such instalment due on the first day of each calendar month during the fiscal year to which the Assessment relates; provided, however, the Annual Assessments for the first fiscal period ending December 31, 2002, shall be based upon such portion of the calendar year 2002 as follows the date of recordation of the Declaration in the Public Records, and shall be payable in such instalments and at such times as the Management Committee, in its sole discretion may determine. The failure of the Committee to give timely notice of any Annual Assessment, as provided herein, shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment, or any other Assessment;

but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 14.01.

**13.06 Initial and Transfer Fees.** Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Unit, whether as a first time or subsequent Owner, the sum of \$300, which sum shall be in addition to any proration of Annual Assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary and to compensate the Committee for administrative start up or records changing costs.

**13.07 Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment shall not exceed the amount per Unit that is determined by the Committee pursuant to Section 13.05. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment may be increased each calendar year thereafter by not more than twenty percent (20%) above the maximum Annual Assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

**13.08 Special Assessments.** The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of amenities, infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Units in the same manner as Annual Assessments. Special Assessments must be assented to by at least sixty percent (60%) of the total Association votes which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

**13.09 Uniform Rate of Assessment.** Except as provided in Section 13.03, all Annual and Special Assessments authorized by this ARTICLE XIII shall be fixed at a uniform rate for all Units.

**13.10 Quorum Requirements.** The quorum at any Association meeting of Owners required for any action authorized by Section 13.08, above, shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast sixty percent (60%) of the total Association votes eligible to vote shall constitute a quorum. If a quorum is not present at the first meeting, or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 13.08, above) at which the requirements for a quorum shall be one-half (½) of that which was required at the immediately preceding meeting.

**13.11 Specific Assessment.** In addition to the Annual Assessment and any Special Assessment authorized pursuant to this ARTICLE XIII, the Committee may levy at any time Specific Assessments (a) on every Unit especially benefitted by any improvement made by the Committee on the written request of the Owner of the Unit to be charged; (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Unit to which the Committee shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs,

maintenance or enforcement action, including all overhead and administrative costs, and all applicable attorneys' fees and costs, and shall be allocated among the affected Units according to the magnitude of special benefit, or cause of damage, maintenance or repair work, or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work when applicable. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Committee, it shall not give rise to a Specific Assessment against the Units benefitted.

**13.12 Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, or encumbrancer of a Unit, and upon the payment of a reasonable fee to the Committee to cover administrative costs, the Committee shall issue a certificate stating whether or not payments of all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

**13.13 Effect of Nonpayment; Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it, or any instalment thereof, becomes due shall be subject to a late charge not to exceed five percent (5%) thereof, which, together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from its due date at the rate of one percent (1%) per month; and the Committee, on behalf of the Association, may bring an action against the Owner who is personally liable therefor, or may foreclose its lien against the Unit pursuant to the provisions of the Utah Code, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. Any judgment obtained in connection with the collection of delinquent Assessments and related charges shall include reasonable attorneys fees, court costs, and every other expense incurred by the Committee in enforcing the Association's rights. Failure of the Committee to promptly enforce any remedy granted pursuant to this Section 13.13 shall not be deemed a waiver of any such rights.

**13.14 Subordination of Lien to Mortgages.** The lien of the Assessments provided herein shall be subordinate to the lien of any Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender. The holder of any such Mortgage, or purchaser who comes into possession of, or becomes the Owner of a Unit by virtue of the foreclosure of such Mortgage, or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such Assessment lien as to any Assessment instalment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit. However, to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale, in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit from the lien of any Assessment instalment thereafter becoming due.

**13.15 No Abatement.** No diminution or abatement of Assessments shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas of the Project, or any part thereof; or (c) from any action taken to comply with the provisions of the Declaration, or with the laws, ordinances, regulations, rules, or order of any governmental authority.

## ARTICLE XIV

### General Provisions

14.01 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Management Committee at the time of delivery or mailing. Any notice required or permitted to be given to the Association, or the Committee, may be given by delivering or mailing the same to the Manager or any member of the Committee.

14.02 **Agent for Service of Process.** Bruce R. Dickerson, whose address is 1013 South Orem Boulevard, Orem, UT, 84058, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the Management Committee shall have the right to appoint a successor agent for service of process who shall be a resident of Utah. The name and address of such successor shall be specified by an appropriate notice filed in the Public Records.

14.03 **Amendment.** This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records which is executed either (a) by Owners who collectively hold at least sixty percent (60%) of the total votes in the Association, or (b) by the Management Committee, on behalf of the Association, which shall certify that the required sixty percent (60%) vote was obtained in a meeting of members, or by consent, and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant in its capacity as Declarant, shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.04 **Party Walls.** Each wall which is built as a part of the original construction of the Units within the Project and placed on the dividing line between Units shall constitute a party wall, and the following provisions regarding such party walls, and liability for property damage due to negligence, or willful acts or omissions, shall apply thereto:

(a) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(b) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Unit thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use. The foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right of any Owner to contribution from any other Owner under this Section 14.03 shall be appurtenant to the land and Unit and shall pass to such Owner's successors in title.

14.05 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage, or number of votes of the Association, or of the Owners, such requirement may be fully satisfied by



obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of votes in the Association, unless a higher percentage or a greater number is required by the Act. The following additional provisions shall govern any application of this Section 14.05:

- (a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;
- (c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and
- (d) Unless the consent of all Owners whose ownership rights are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

**14.06 Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Tract or Project, may be assigned.

**14.07 Interpretation.** The captions pertaining to the ARTICLE and Section numbers of this Declaration are for convenience only and shall in no way effect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of Utah shall govern the validity, construction and enforcement of this Declaration.

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

**14.09 Enforcement.** The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of this Declaration. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for the violation of, any provision of this Declaration shall be entitled to collect court costs and reasonable attorneys fees.

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

14.11 **Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the City of Orem, Utah, authorizing such action, the appropriate instruments to remove the Project from the provisions of the Act as provided by Section 57-8-22 of the Act or a successor provision thereto.

14.12 **Effective Date.** This Declaration and any amendment or Supplemental Declaration hereto shall take effect upon its being filed for record in the Public Records.

Dated as of the day and year first above set forth.

**DECLARANT:**

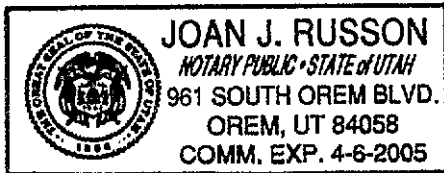
**PINEHURST AT 800 NORTH, L.L.C.**

By: *Bruce R. Dickerson*  
Bruce R. Dickerson, Manager

TATE OF UTAH        )  
                              : ss.  
COUNTY OF UTAH    )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of March, 2002 by **Bruce R. Dickerson** in the capacity indicated.

*Joan J. Russon*  
NOTARY PUBLIC



**EXHIBIT A**

**DECLARATION OF CONDOMINIUM  
(Including Owner Association Bylaws)**

**PINEHURST PLAZA RETAIL CONDOMINIUMS**

**(A Convertible Space Condominium Project)  
Orem, Utah**

Real property located in Orem, Utah County, State of Utah, described as follows:

Commencing at a point located North  $00^{\circ}39'38''$  West along the Section line 383.82 feet and East 1989.03 feet from the West quarter corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North  $00^{\circ}40'37''$  West 304.43 feet; thence North  $89^{\circ}35'44''$  East 499.53 feet; thence South  $43^{\circ}45'59''$  East 211.41 feet; thence along the arc of a 119.00 foot radius curve to the left 48.55 feet (chord bears South  $10^{\circ}32'54''$  West 48.21 feet); thence South  $00^{\circ}34'22''$  East 153.94 feet; thence West 158.60 feet; thence along the arc of a 115.00 foot radius curve to the right 79.34 feet (chord bears North  $70^{\circ}14'04''$  West 77.78 feet); thence along the arc of a 85.00 foot radius curve to the left 54.21 feet (chord bears North  $71^{\circ}40'38''$  West 53.29 feet); thence North  $89^{\circ}56'50''$  West 349.05 feet to the point of beginning. Area = 4.49 acres.

## EXHIBIT B

**DECLARATION OF CONDOMINIUM  
(Including Owner Association Bylaws)**

**PINEHURST PLAZA RETAIL CONDOMINIUMS**

(A Convertible Space Condominium Project)  
Orem, Utah

<u>Unit No.</u>	<u>Convertible Space (1)</u>	<u>Size (Sq. Ft.) (1)</u>	<u>Total (1)</u>	<u>Ownership Interest Percentage (2)</u>	<u>Votes</u>
A		3,200	3,200	5.305	530.5
E		4,959	4,959	8.221	822.1
G		2,704	2,704	4.483	448.3
H		4,016	4,016	6.657	665.7
	<u>45,444</u> 45,444	<u>14,879</u>	<u>60,323</u>	<u>75.334</u> 100.000	<u>7,533.4</u> 10,000.0

- (1) Size based on the approximate number of square feet of floor space within each respective Unit or Convertible Space as shown on the Map and rounded off (including to center under interior walls and to surface of exterior walls), as determined by Dudley & Associates Engineers-Planners-Surveyors, Orem, Utah.
- (2) Percentages may be adjusted by one one-thousandth of a percentage point in order to provide for a total of one hundred percent (100%).